

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**ORIGINAL** **75-6052**

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P/S

**United States Court of Appeals**

For the Second Circuit.

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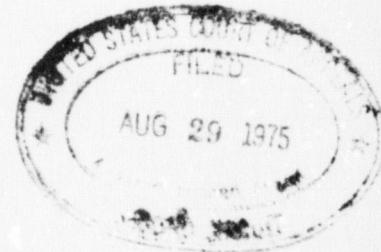
DOUGLAS J. BUTURLA,

*Plaintiff-Appellant,*

-against-

SECRETARY OF HEALTH, EDUCATION and WELFARE,  
*Defendant-Appellee.*

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**Appendix**

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~~DOCKET ENTRIES~~

- 72 Complaint filed Summons issued.
- 71 Summons returned and filed. Deft svrd on 8-10-71 & by certified mail.
- 71 By Rosling, J.-Order of 10/18/71 extending time for deft. to answer to complaint to 12/10/71 filed.
- 71 ANSWER of deft filed.
- Certified copy of transcript of the entire record of proceedings relating to the application of Douglas J. Buturla filed.
- /75 By Resing, J.-Order dtd 1/23/73 remanding action to HEW for further proceeding filed. (P/C mailed to attys) *1/24*
- Notice of motion and memorandum of law to dismiss complaint (upon supplementary proceedings), ret 4-18-75 at 10 A.M. filed.
- 75 Before WEINSTEIN, J.-Case called and adj'd to 5-22-75.
- 75 By WEINSTEIN, J.-Stipulation dtd 4-16-75 adjourning the deft's motion for judgment on the pleadings to 5-27-75 filed.
- 75 Memorandum of Law in opposition of motion for judgment on the pleadings filed.
- 75 Before WEINSTEIN, J. - Case called. Deft's motion for summary judgment argued & granted. There was a substantial basis for the Secretary.
- By WEINSTEIN, J.-Order and Judgment dtd 5-4-75 that judgment on the pleadings be entered in favor of, and affirming the challenged determination of, deft, etc filed. (P/C mailed)
- 5 Stenographer's transcript of 5/27/75 filed.
- 75 Notice of appeal filed. Copies mailed accordingly.
- 75 Certified copy of transcript/supplemental record of proceedings filed.
- Acknowledgment recd and filed from the Court of Appeals for receipt of file.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

Douglas J. Buturka,

Plaintiff

vs.

SECRETARY OF HEALTH, EDUCATION,  
AND WELFARE,

Defendant

Civil Action No. 71-C-1061

SERIALIZED

I, H. Dale Cook, Chairman, Appeals Council and Director, Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, under authority conferred upon me by the Secretary, hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings relating to the application of Douglas J. Buturka to establish a period of disability, and his claim for disability insurance benefits under title II of the Social Security Act, as amended, such transcript including application for a period of disability and disability insurance benefits, testimony and other evidence upon which the decision of the hearing examiner of the Bureau of Hearings and Appeals, Social Security Administration, was based.

H. Dale Cook

Date: October 5, 1971

H. Dale Cook

Douglas Buturia, Claimant & M/C  
A/C 160-32-5410

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Bonita Morris  
(Claimant)

140-32-5620  
(Social Security Number)

(Wage Earner) (Leave blank if same as above)

EXHIBITS

| <u>EXHIBIT<br/>NO.</u> | <u>DESCRIPTION</u>  | <u>NO. OF<br/>PAGES</u> | Court<br>Transcript<br>Page Nos. |
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| 11                     | Copy of Medical Report by H. Briggan, M. D., covering period of hospitalization at Doctors' Hospital of Staten Island, Staten Island, New York, from 12/10/69 to 12/13/69 | 1                       | 53                               |
| 12                     | Professional Qualifications of Henry Briggan  | 1                       | 54                               |
| 13                     | Medical Report by Henry Briggan, M. D., dated 4/28/70   | 32                      | 55-57                            |
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Douglas Buturla  
(Claimant)

140-32-5420

(Social Security Number)

(Wage Earner) (Leave blank if same as above)

EXHIBITS (Continued)

| <u>EXHIBIT NO.</u> | <u>DESCRIPTION</u>  | <u>Court Transcript</u> | <u>NO. OF PAGES</u> | <u>Page Nos.</u> |
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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
P.O. BOX 2010, WASHINGTON, D.C. 20013

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June 21, 1971

^ REFER TO: HAC  
140-32-5420

BUREAU OF  
HEARINGS AND APPEALS

ACTION OF APPEALS ON YOUR REQUEST FOR REVIEW

Mr. Douglas J. Buturla  
57 Rockland Avenue  
Staten Island, New York 10306

Dear Mr. Buturla:

Your request for review of the hearing examiner's decision has been carefully considered by the Appeals Council. The Council's consideration of your request has included all the evidence in your case, the law and regulations applicable to your claim, the hearing examiner's evaluation of the facts and the reasoning in his decision, and your reasons for believing your claim should be allowed.

The Appeals Council has concluded that the decision of the hearing examiner is correct. Further action by the Council would not, therefore, result in any change which would be of advantage to you. Accordingly, the hearing examiner's decision stands as the final decision of the Secretary in your case.

If you desire a review of the hearing examiner's decision by a court, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from this date. See section 205(c) of the Social Security Act, as amended (section 405(c), Title 42, United States Code). If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant.

Sincerely yours,

Carl Monk  
Chair, Appeals Council

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
U.S. DEPARTMENT OF HUMANITIES AND SOCIAL SERVICES

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REQUEST FOR REVIEW OF HEARING EXAMINER'S ACTION

Type or print in ink and attach to the District Office, Social Security Administration

|                                   |  |
|-----------------------------------|--|
| NAME<br><b>John R. Butzweiler</b> | FOR<br><input checked="" type="checkbox"/> Statement of Disability Benefits (27)<br><input type="checkbox"/> Continuance of Disability Benefits (28)<br><input type="checkbox"/> Other<br><br>(Specify type claim) |
| DATE, SIGNATURE<br><b>1/14/71</b> |  |

I disagree with the Hearing Examiner's action on the above claim and request that the Appeals Council, Bureau of Hearings and Appeals, review it. My reasons for disagreement are:

**He does not wish to appear before the Appeals Council in Washington, D.C. at my own expense.**

|  |
|--|
| Address this form, or forward within 10 days to the Appeals Council at the address shown below, any evidence or supplemental statement you wish to submit. |
|--|

I understand the Appeals Council may deny my request for review, but if it grants the request:

- I  wish  do not wish to appear before the Appeals Council in Washington, D.C. at my own expense.  
I  wish  do not wish to file a brief or further written statement.

Signed by (Either the claimant or representative should sign - Enter addresses for both)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE

CLAIMANT'S SIGNATURE

STREET ADDRESS

STREET ADDRESS

CITY, STATE, AND ZIP CODE

CITY, STATE, AND ZIP CODE

TELEPHONE NUMBER

DATE:

**1/14/71**

TELEPHONE NUMBER

**979-0213**

Claimant should not fill in below this line.

Do you expect the Appeals Council to rule within 10 days of the hearing examiner's action?

Yes

No

If "No" is checked: (1) attach claimant's explanation for delay; (2) attach any pertinent letter, material or information in the district office.

APPEALS COUNCIL REQUEST FORM

VIEW OF HEARING EXAMINER'S ACTION

Date request for review was filed:

**1/14/71**

Phone number to which for review was filed:

**703-229-1446**

Federal Social Security Administration

BY

**John R. Butzweiler**

(Title)

**ATT**

(Street Address)

**345 First Ave.**

(City) (State) (ZIP Code)

**Washington, D.C. 20013**

APPEALS COUNCIL

APPEALS COUNCIL

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

**NOTICE OF DECISION**

**PLEASE READ CAREFULLY**

If you disagree, in whole or in part, with the enclosed decision of the hearing examiner, you may request the Appeals Council to review it. However, your request for review must be filed within 60 days following the date shown below.

You, or your representative, may file the request for review at the nearest office of the Social Security Administration, or you may file the request for review with the hearing examiner, or with the Appeals Council.

Unless you file a timely request for review by the Appeals Council, you may not obtain a court review of your case under sections 205 (g) and 1869 (b) of the Social Security Act.

This notice and enclosed copy of hearing examiner's decision mailed to the claimant on

June 2, 1971

DEPARTMENT OF  
**HEALTH, EDUCATION, AND WELFARE**  
 SOCIAL SECURITY ADMINISTRATION  
 BUREAU OF HEARINGS AND APPEALS

**HEARING EXAMINER'S DECISION**

In the case of

Douglas Buturla

(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and/or  
 Disability Insurance Benefits

140-32-5420

(Social Security Number)

Claimant filed application for disability insurance benefits and for the disability "freeze" on April 14, 1970 alleging that he became unable to work on December 10, 1969 due to back and rib injuries. His application was denied by the Bureau of Disability Insurance of the Social Security Administration on September 22, 1970 and he filed a request for reconsideration on October 5, 1970. The prior denial was affirmed in a reconsideration determination dated November 6, 1970.

Claimant filed a request for hearing on January 19, 1971 reciting that he disagreed with the determination made in his case because he needed a spinal fusion operation and could not work.

A hearing was held at New York City on May 24, 1971. The claimant was present in person but was not represented by counsel or other qualified representative. He specifically stated that he desired to proceed with his hearing without being represented, after it had been carefully explained to him as to his right to be represented, if he so desired.

**ISSUES, APPLICABLE LAW AND REGULATIONS**

The general issues before the Hearing Examiner are whether the claimant is entitled to a period of disability and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act, as amended. The specific issues are whether the claimant was under a "disability", as defined in the Act, and, if so, when such disability commenced and the duration thereof; and whether the special earnings requirements of the Act are met for the purpose of entitlement. Claimant filed his application on April 14, 1970, and continues to meet the special earnings requirement through December 31, 1974. Thus, on the basis of his application filed on April 14, 1970, the evidence must establish that the claimant was under a disability as defined in the Act beginning on or before the date of this decision, for entitlement to disability insurance benefits or establishment of a period of disability.

Section 216(i) of the Social Security Act provides for the establishment of a period of disability, and Section 223 provides for the payment of disability insurance benefits. As herein pertinent, both Sections define "disability" as an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

Section 223(d)(1) of the Social Security Act, as amended, defines "disability" (except for certain cases of blindness) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for purposes of Section 202(e) or (f) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country."

Section 404.1502 of the Social Security Administration Regulations No. 4 (20 Code of Federal Regulations, Section 404.1502) provides that whether or not an impairment in a particular case constitutes a disability as defined in the Act, depends on all of the facts of that case, and that primary consideration is given to the severity of the individual's impairments. Consideration is also given to such factors as the individual's age, education, training and work experience. The Regulation further provides that medical considerations alone can justify a finding that the individual is not under a disability where the only impairment is a slight impairment or a combination of slight abnormalities. On the other hand, medical considerations alone, including the physiological and psychological manifestations of aging, can, except where other evidence rebuts a finding of "disability", justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement (has lasted or can be expected to last for a continuous period of not less than 12 months), and is listed in the medical listings in Subpart P; or the Secretary determines that his impairment or combination

of impairments is medically the equivalent of a listed impairment in Subpart P. Conditions which constitute neither a listed impairment nor the medical equivalent thereof likewise may be found disabling if they do, in fact, prevent the individual from engaging in any substantial gainful activity.

#### EVIDENCE OF CLAIMANT AT HEARING

At the hearing, claimant appeared to be of about his stated age of 28. He was a very nice looking young man and seemed to be of average intelligence. Claimant testified that he was a high school graduate.

Claimant related that he went into the Navy after he graduated from high school and was on active duty for two years. He was in the Reserves for some six years.

His first work after being discharged from the Service was for United Parcel Service, loading and unloading tractor trailer trucks, which he did for about three months. He then worked for an exterminating company as an exterminator for about a year.

He recited that he started working for the New York City Police Department in September of 1965 and worked in this capacity until December 10, 1969, when he received rib and back injuries in an automobile accident. He stated that he had not returned to full duty since, that he was sent to limited duty for approximately a week, doing a desk job, and that he just couldn't do it.

He related that he would get severe pains in his low back which radiated down his right leg. He receives regular pay from the New York Police Department.

When asked about his activities he replied that he was restricted to his house by the Police Department when he was not able to work. The only time he goes out is when he goes to the police surgeon or his own doctor. He goes to the police surgeon at least every two weeks. He is taking medication for extreme pain. His own doctor is Dr. Briggin who he sees about once a month. He stated that Dr. Briggin examines him and recommends a spinal fusion operation. The claimant explained that he doesn't want this operation as there is no guaranteed result from the operation and the odds on it being a success are very slight. He stated that he was first advised unequivocally concerning this spinal fusion surgery in January of 1971 although it had been suggested as a possibility some time before by a doctor.

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Claimant complained that he was restricted from bending and that he couldn't sit or stand for prolonged periods without severe pain due to his condition. He concluded his testimony by stating that the police surgeon had recommended that he be put out of the Police Department because of his injury.

## SUMMARY OF THE MEDICAL EVIDENCE

Claimant was hospitalized from December 10 to December 13, 1969 at Doctor's Hospital at Staten Island, New York. The discharge summary is signed by Dr. Henry Briggan, an orthopedic surgeon. It is recited that claimant was admitted to the hospital following injuries sustained while seated next to the driver in a car when it was struck by another car and driven into a parked vehicle. The doctor stated that claimant was apparently thrown against the door on the right, injuring his lower back, right hip region and right lower ribs. X-rays were taken and were negative for fractures. He was given medications for pain and put on complete bedrest. He was discharged for further follow-up on December 13th, using a rubber foam strapping. He was still complaining of pain in his lower back, with radiation to both shoulders and aching in his right hip region.

Examination showed tenderness over the lumbosacral spine with restricted trunk movement. There were no neurological findings present. There was pain on straight leg raising and tenderness over the lumbosacral area.

The diagnosis was ligamentous sprain, dorsal lumbar spine, contusion of right lower ribs.

There is another report by Dr. Briggan dated April 28, 1970. On examination on December 22, 1969, he still complained of pain in his lower back with radiation up to both shoulders. He was unable to sit for any length of time and complained of aching in his right hip region. There was still restriction of trunk movement, tenderness over the lumbosacral spine and right sacroiliac areas with restriction of straight leg raising and the complaint of pain in his lower back. There was some tenderness over the lower ribs on the right. Claimant was started on physiotherapy treatment.

On January 5, 1970 claimant still complained of severe pain, at times, in his lower back especially after sitting or bending. At times he was unable to get comfortable, with a feeling of a "big knot" in his lower back with radiation up to the shoulder blades. There was still restriction of trunk movement and tenderness over the lumbosacral spine in the right costal area. There was pain on straight leg raising but no neurological findings were present. He was continued on physiotherapy treatments and advised to obtain a lumbosacral support.

On January 26, 1970 claimant complained of severe pain in his mid and low back and right lumbar region which had been present for one week. At times, the pain radiated up to between the shoulder blades. He

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was wearing a lumbosacral support without much relief. There was still restriction of trunk movement and claimant stood with a slight forward list. There was pain on straight leg raising and tenderness over the lumbosacral spine. Claimant was continued on physiotherapy treatments and the lumbosacral support.

On February 9, 1970, claimant complained of considerable pain over the lumbosacral area and right lower rib and lumbar region, present for the past week. The pain was aggravated on trunk movements with restriction and limitation present. There was also pain on straight leg raising on the right with restricted motion present. No neurological findings were present. Claimant was continued on physiotherapy treatments and exercises.

On March 9, 1970, claimant was somewhat improved with physiotherapy treatments. He still complained of residual pain in his lower back with radiation down the left lower extremity. There was still pain on straight leg raising but less restriction at that time. No neurological findings were present. Claimant was continued on physiotherapy treatments and exercise. The diagnosis was ligamentous sprain of the dorso-lumbar spine and contusion to the right lower ribs. The prognosis was still guarded as to any permanent disability. The doctor stated that claimant still remained under observation and was still unable to return to regular duties.

On April 6, 1970 examination disclosed that he still had restricted trunk movements and pain on straight leg raising and also on flexion of the neck with tenderness over the right lumbar region and along the anterior superior iliac crest. Physiotherapy was to be discontinued temporarily but claimant was to continue with warm baths and exercises. The doctor suggested a neurological consultation and stated that claimant was unable to return to regular duty as yet.

On April 28, 1970 the doctor stated that claimant was to resume physiotherapy but was still awaiting neurological consultation.

There is a letter report along with an enclosure dated May 4, 1970 by Dr. Stephen M. McCoy, a board certified surgeon of Brooklyn, New York. The letterhead indicates that Dr. McCoy is Chief Surgeon of the Police Department of New York and he recites that as a result of claimant's injury sustained in the line of duty on December 10, 1969, claimant had been on continuous sick report up until this time.

There is a report dated May 26, 1970 by Dr. Thomas Q. Garvey, Jr., board certified Otolaryngologist of New York. Dr. Garvey is also a specialist in Neurological Surgery. His diagnosis is neuritis of the femoral nerve in the right anterior thigh. He recommended conservative treatment and said the prognosis was guarded.

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There is another report by Dr. Henry Briggan dated June 9, 1970 and he stated that claimant still complained of pain in his lower back and right hip region with occasional radiation down the anterior right thigh. Upon examination, claimant stood erect, with restriction of trunk movements, flexion, extension and lateral bending. There was tenderness over the lower lumbar spine on the right, and pain on straight leg raising. There was no definite neurological findings although he complained of some tenderness along the anterior thigh on the right. The doctor stated that inasmuch as his symptoms still persisted, he would advise further hospitalization in the form of pelvic traction and complete bedrest.

There is a report of a period of hospitalization signed by Dr. Briggan covering a period from June 19 to July 10, 1970. The doctor recited that claimant had been receiving physiotherapy, pelvic traction and heat massage. He had EMG studies which were reported negative. He was discharged somewhat improved on July 10th for further follow-up at the office. The diagnosis was again ligamentous sprain, dorso-lumbar spine, with residual symptoms still present.

Claimant was seen by this doctor again on July 14, 1970 and he recites that the pain still persisted in claimant's lower back with radiation down both lower extremities, especially on the right, aggravated on coughing and trunk movements. He was unable to stand erect, with restricted trunk movements. No definite neurological findings were present. He also had pain on straight leg raising. The doctor recited that claimant was to have pelvic traction at home and would probably require a myelogram later.

There is another report by Dr. McCoy dated August 14, 1970. Dr. McCoy stated it was indicated that further treatment was necessary and claimant's failure to respond made it difficult to predict when he could return to work.

There is an undated medical report by Dr. Russo which merely states that claimant was being treated by him for essential hypertension which was not related to his disability.

There is a report dated October 26, 1970 by Dr. David M. Bosworth, a board certified specialist in Orthopedic Surgery. Claimant had complaints of lumbar and lumbosacral pains, radiating to the postero-lateral aspect of the right lower extremity, to the upper calf. The

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doctor indicates that x-rays on February 23, 1969 and May 4, 1970 of the lumbosacral spine were normal, however x-rays on October 7, 1970 showed slight narrowing of lumbar 4th disc interspace.

On complete orthopedic examination claimant showed restriction of lumbosacral motions, protection, positive Lasegue on the right, and lumbosacral pain on forced head flexion. All other findings were negative. The doctor's diagnosis was lacerated lumbar 4th disc, with only slight degenerative changes. He recommended that claimant continue lumbosacral belt support and to do warm baths at home before bedtime to relax him and use a firm bed support and occasional observation. He suggested stopping intensive treatment, as magnifying situations. He suggested that claimant be returned to limited duty and stated he thought this would be of value.

Dr. Bosworth saw claimant again on January 18, 1971 and stated that claimant's pain had continued, that he had returned to restricted duty, but had another attack of pain and was out on sick report. Examination still disclosed restriction of lumbosacral motion and protection, and positive Lasegue on both sides, weakness dorsiflexion of the right hallux and decreased sensation of lumbar 5 nerve root level, downward on the right. The doctor's diagnosis was lacerated lumbar 4 disc. He stated that with the continuing disability and increased findings he would advise exploration of lumbar 4 on the right and right midline and fusion of lumbar 4 to sacrum with a distraction graft. He stated that claimant was to consider the matter and the Police Department was to consider same and if they wished it done, would be glad to furnish him with the above surgical repair. The doctor stated that claimant was disabled for police duty.

There is another report by Dr. Bosworth dated January 26, 1970 which discloses no new information, merely stating that he first saw claimant on October 26, 1970 and saw him again on January 18, 1971.

#### FINDINGS

After carefully reviewing and analyzing the entire record and evidence in this claim, the Hearing Examiner finds that:

1. Claimant received injuries in an automobile accident on December 10, 1969 diagnosed as ligamentous sprain, dorso-lumbar spine and he continued to have symptoms up until the present time and has restriction of lumbosacral motions and positive Lasegue on the right and lumbosacral pain.

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2. After months of treatment, the diagnosis was changed to lacerated lumbar fourth disc and a spinal fusion was recommended which the claimant has refused.
3. The claimant cannot be found to be under a disability due to the fact that he has failed to accept the recommended spinal fusion which is contemplated to restore his ability to do his former work.
4. The evidence fails to establish that the claimant's impairment prevented him from engaging in substantial gainful activity for any continuous period, prior to the date of this decision, which has lasted or can be expected to last for at least 12 months.
5. The claimant was not under a "disability" as defined in the Social Security Act, as amended, at any time prior to the issuance of this decision.
6. Even though, due to his current condition, claimant has not been certified as able to return to his regular police duty, he does have the residual physical capacity to engage in many types of light work, not as physically demanding as his former work, which exists in significant numbers in the large metropolitan area where he resides.

#### EVALUATION OF EVIDENCE

This unfortunate young man did receive moderately severe injuries in an automobile accident in December of 1969 which have precluded him from being certified as being able to perform his sometimes rigorous duties as a policeman. Although not all of the time rigorous or demanding, the duties of a policeman are such that the physical standards are set quite high and for this reason the police surgeon has not certified the claimant as being able to return to his work. However, it has been the opinion of his attending doctors that a spinal fusion would restore his ability to work as a policeman. For some reason, this claimant has decided that he does not want to undergo a spinal fusion as no one will give him a 100% guarantee that it will be a success. A spinal fusion operation, although seeming somewhat serious, is accepted as a routine operation in our present day sophisticated medical experience and claimant's failure to follow the advice to undergo this surgery, in itself, bars him from receiving the disability insurance benefits he is seeking under the provisions of Section 404.1507 of the Social Security Regulations No. 4.

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Claimant's reason for failing to accept this surgery which has been offered to him is not considered "justifiable cause".

Even though claimant is precluded from returning to his former duty as a policeman due to the residuals of his injuries received in December of 1969 he is obviously not precluded from engaging in all other kinds of substantial gainful activity. This claimant is only 28 years of age, is a high school graduate and is of average intelligence. Certainly these factors, along with his prior work and military experience, would qualify him for an abundance of light and quasi-sedentary jobs which exist in substantial numbers in the large metropolitan area where he resides. The mere fact that he is precluded from engaging in his former work does not entitle him to Social Security disability insurance benefits. To the contrary, the evidence must prove that due to his impairment, considering his age, education and prior work experience, he is precluded from engaging in any substantial gainful activity. The evidence in this case utterly fails to prove that he has any limitations upon his ability to function of such severity that he would be precluded from engaging in any type of substantial gainful activity.

It is conceded by the Hearing Examiner that due to the fact that he continues to be paid his salary by the Police Department inasmuch as he is off from work due to an injury received on the job, he is not likely to be seeking work as long as this continues. However, this factor cannot be considered in his claim for disability insurance benefits under the Social Security Act. To the contrary, all of the factors above cited must be considered in determining whether or not he could actually engage in substantial gainful activity.

#### DECISION

It is the decision of the Hearing Examiner that the claimant, based on his application filed on April 14, 1970, is not entitled to a period of disability or to disability insurance benefits under the provisions of Sections 216(i) and 223, respectively, of the Social Security Act, as amended.

*William V. McNemar, Jr.*  
William V. McNemar, Jr., Hearing Examiner  
1234 Federal Building, 400 N. 8th Street  
Richmond, Virginia 23240

Date: June 2, 1971

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
OVERHEAD EXPENSES AND FEES

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NOTICE OF HEARING

In the case of

John Doe

SSN # 123-45-6789  
(Social Security Number)

Period of Disability and  
Disability Insurance Benefits

TO: John Doe, Esq.  
P.O. Box 12345  
800 Broadway, New York 10018

Pursuant to your written request and provisions of Section 205(i) of the Social Security Act, a hearing will be held by the undersigned, a Hearing Examiner of the Bureau of Hearings and Appeals, on the

day of May 26, 1971, at 10:00 A.M. in Room 101 of Building,  
26 Federal Plaza, Federal Building, New York  
(Number and Street) (City) (State)

The general issues to be determined are whether you are entitled to a period of disability under section 216(i) and to disability insurance benefits under section 223(d).

The specific issues to be decided are: (1) Whether you have the required insured status under the law; and if so, as of what date(s); (2) The nature and extent of your impairments; (3) Whether your impairment has lasted or can be expected to last for a continuous period of at least 12 months, or can be expected to result in death; (4) Your ability to engage in substantial gainful activity since your impairment began; (5) When your disability, if any, began.

This hearing involves your application(s) filed on April 14, 1970.  
(Date)

You should be prepared to prove that you were under a disability on or before May 24, 1971.  
(Date)

It may be to your interest to have your physicians appear at the hearing to testify on your behalf. Be prepared to furnish your entire work history, including names of employers, dates of employment and a description of duties performed; schools and training; names of physicians who have examined or treated you; and periods of hospitalization with names of hospitals.

REMARKS:

REPOSSUM - Please sign & return at once the right side of this card, certifying me whether you will be present at the above time and place. No postage is required on this card.

|                              |                  |                                   |
|------------------------------|------------------|-----------------------------------|
| Date                         | Established Name | Address                           |
| April 14, 1971               | John Doe, Esq.   | 1000 Broadway, New York, NY 10018 |
| Enclosure (Name and Address) |                  |                                   |

District Office (Address)  
P.O. Box 12345, New York, NY 10018  
Taped, New York 10010

Enclosure

READ THE OTHER SIDE OF THIS CARD FOR FURTHER INFORMATION CONCERNING YOUR HEARING.

Form P-100-1A

BALTIMORE

6-7-71

## BENEFIT INFORMATION

What Happens If You Apply?

To be found eligible "disability", an individual must be unable to engage in any substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of at least twelve months, and which is severe as to prevent the individual from performing substantially his own work, but, considering his age, education, previous training and work experience, in any claim for substantial gainful work which exists in significant numbers either in the region in which he lives or in the other regions of the country.

Appearance at Hearing

The date and time of this hearing have been set aside especially for you. Your failure to appear without good reason may cause dismissal of your Request for Hearing. Even though there is good reason, any postponement will delay disposition of your case. If an emergency arises preventing your appearance after you mail the postal card stating that you would arrive early, notify the Hearing Examiner promptly of your problem. Also, if you know of the exact date of the hearing, state it in which case you should be further advised.

What You Should Do

This law places upon you the burden of submitting evidence to support your claim. You must prove the severity of your impairment by reliable medical evidence, and you may do so by your own medical testimony, or by presenting all medical and other evidence not already presented in your case: (1) A report from each doctor who has examined treated you; (2) The results of laboratory tests and clinical findings; (3) Copies of medical evidence submitted to insurance companies, the State Compensation Commission, (4) Hospital records. If you find it impossible to obtain these latter records, notify the Hearing Examiner promptly before the day of the hearing. The Hearing Examiner may ask you to undergo a medical examination which will be performed at no expense to you.

The Hearing Examiner will question you about the types and dates of your past employment, earnings, schools you attended, social activities and present daily activities. You should be prepared to give such information at the hearing.

Conduct of Hearing

You will have an opportunity to examine the documentary evidence on the day of the hearing. If you wish to do so, it before the day of the hearing you may do so at the Hearing Examiner's office.

At the hearing the Hearing Examiner will inquire fully into the matters at issue. You may present evidence either in the form of written documents or the testimony of witnesses, or both. You may bring your own physician or other witnesses to testify on your behalf. If necessary, the Hearing Examiner may ask the doctor who examined you to appear, and may bring in a medical or vocational expert to testify. Your testimony and that of any witnesses will be under oath or affirmation, and a verbatim record of the proceedings will be made. You may suggest findings of fact or conclusions of law and present arguments orally or in writing.

Representation

If you do not require, you may be represented at the hearing by an attorney or other qualified person of your choice. If you do not want in person to represent yourself, you may designate another to do so for you. In that case, you must file a written power of attorney with the Director of Hearings and Appeals. Your representative must petition for his or her appointment, and you may furnish a copy of his petition.

If you are furnished a hearing, and your representative is entitled to 25 percent of your fee, the fee will normally be paid for you, and you will pay only 75 percent of his fee. If the approved fee is less than 25 percent of the amount of the fee, the amount of the fee will be paid entirely by you. If the approved fee is more than 25 percent, the excess of the difference is a matter to be settled between you and your attorney.

If your representative is not an attorney, none of your benefits will be withheld; and payment of the fee which is approved is a matter to be settled between you and him.

If you have other questions, your local Social Security office will be glad to help you.



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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

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REFER TO

BUREAU OF  
HEARINGS AND APPEALS1234 Federal Building  
400 North 8th Street  
Richmond, Virginia 23240

April 9, 1971

Mr. Franklin Luttrell  
97 Peckinpaugh Avenue  
Staten Island, N.Y. 10314Re: Your Disability Application  
A/H 140-92-5420

Dear Mr. Luttrell:

This is to advise you that your request for a hearing before a hearing examiner of the Social Security Administration is now pending in this office. It is my intention to set this claim for hearing within the next 30 days, if at all possible.

If you have undergone any medical treatment since you filed your application for which you have not obtained medical reports for the Social Security Administration, please get the medical reports from your doctors or hospitals before the hearing is set so that you can submit this additional evidence at the hearing.

You will receive due notice of the time and place of hearing.

Very truly yours,

William V. McNemar, Jr.  
Hearing Examiner

cc: Social Security Administration  
Staten Island, N.Y.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

**REQUEST FOR HEARING**

Take or mail original and all copies to your local Social Security office.

CLAIMANT'S NAME  
DEGELAY BUTURLA  
WAGE EARNER'S NAME (Leave blank if same as above)  
-  
SOCIAL SECURITY NUMBER  
146-32-5420

|   |  |
|---|--|
| <p><b>CLAIM FOR</b></p> <p><b>Entitlement to Disability Benefits (97)</b></p> <p><b>Continuance of Disability Benefits (98)</b></p> <p><b>Other</b></p> <hr/> <p>(Specify type claim)</p> | <p><b>100</b></p> <p>26 Federal Plaza, Rm. 3123<br/>New York, New York 10007</p> |
|---|--|

I disagree with the determination made on the above claim and request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. My reasons for disagreement are:

that S. ~~has~~<sup>had</sup> a copy of his opinion and  
cannot speak of it.

Check one of following:

- I have additional evidence to submit.  
(Attach such evidence to this form or forward to the Social Security Office within 10 days.)

I have no additional evidence to submit.

**Check ONLY ONE of the statements below.**

- I wish to appear in person before the hearing examiner.

I waive my right to appear and give evidence, and hereby request a decision on the evidence before the hearing examiner.

Signed by: (Either the claimant or representative should sign-Enter addresses for both. If claimant's representative is not an attorney, complete Form SSA-1696)

**SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE**

CLAIMANT'S SIGNATURE

---

**ADDRESS**

**ADDRESS**

**CITY, STATE, AND ZIP CODE**

**CITY, STATE, AND ZIP CODE**

TELEPHONE NUMBER

[DATE]

**TELEPHONE NUMBER**

979-0213

Is this request filed within 6 months of the reconsideration determination?  Yes  No  
If "No" is checked: (1) attach claimant's explanation for delay, (2) attach any pertinent letter, material, or information in the Social Security Office.

ACKNOWLEDGMENT OF REQUEST FOR HEARING

Your request for a hearing was filed on 1/15/77 at 5:45 PM. The hearing examiner will notify you of the time and place of the hearing at least 10 days prior to the date which will be set for the hearing.

|                                      |   |
|--------------------------------------|---|
| <b>Hearing<br/>Examiner<br/>Copy</b> | TO<br><input checked="" type="checkbox"/> Hearing Examiner _____<br><small>(Location)</small>   |
| <b>Claim<br/>File<br/>Copy</b>       | TO<br><input type="checkbox"/> Hearing Examiner-Disability file in BD<br>TELETYPE BDI, BALTIMORE, MD. <i>Lx 1/12/61</i><br><br><input type="checkbox"/> Payment Center _____<br><small>(Location)</small><br><input type="checkbox"/> BHI _____<br><small>(Location)</small><br><input type="checkbox"/> DFC (BRSI) <input type="checkbox"/> CWAB (BDPA)<br><br>Interpreter Needed _____<br><small>(Language)</small> |

For the Social Security Administration

By: Ira R. Epstein  
(Signature) (Title)

597 Forest Avenue  
Staten Island, N.Y. 10315  
(Street Address)

**Servicing District Office Code**

**23**

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

**29**

TRANSCRIPT

In the case of

Claim for

Douglas Biturla

(Claimant)

Period of Disability and  
Disability Insurance Benefits

Douglas Biturla

(Wage Earner)

140-32-5920

(Social Security Account Number)

Hearing Held

at

Federal Building, Room 3138  
Federal Plaza  
New York, New York

on

May 24, 1971

APPEARANCES: Douglas Biturla, Claimant

WILLIAM V. MCNAMAR, JR.  
Hearing Examiner

MARJORIE H. SWAIX  
Hearing Assistant

## INDEX OF TRANSCRIPT

In the case of

Account Number

Douglas Buturla, claimant and wage earner 140-32-5420

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| Opening Statement by Hearing Examiner ----- | commencing | 1  |
| Testimony of Claimant -----                 | commencing | 3  |
| Hearing Closed -----                        |            | 10 |

(The following is a transcript of the hearing held in the case of Douglas Puturla, a claimant for Social Security disability insurance benefits, Social Security Account number 140-32-5420. The hearing was held at New York, New York before Hearing Examiner William V. McVernar, Jr., Hearing Assistant Marjorie P. Smith.)

(The hearing commenced 1:50 p.m., on May 24, 1971.)

EXAMINER: All right, Mr. Puturla, I am going to make what is called the opening statement in your case which will explain to you how your case got to this stage of the proceedings, what the questions or issues to be determined by me are in your case, and how the hearing is conducted.

OPENING STATEMENT BY HEARING EXAMINER

We are ready to proceed with the hearing in the case of Douglas Puturla, a claimant for disability insurance benefits on his earnings record, Social Security Account Number 140-32-5420. Mr. Puturla, I am a Hearing Examiner for the Bureau of Hearings and Appeals of the Social Security Administration and I am not a representative or an employee of the Bureau of Disability Insurance which rendered the prior determination which you are questioning in this proceedings.

Now, in the notice of hearing which I sent to you I advised you of your right to be represented by an attorney or some other qualified person. Now, it's not necessary nor required that you be represented by someone in this case, and I assume that due to the fact that you are here today alone in your own behalf you have decided to proceed with your case without being represented, is that correct, sir?

CLAIMANT: That is correct.

EXAMINER: Very well then, let me explain this hearing procedure to you. The purpose of this hearing is to give you the opportunity to have your case heard and considered by an independent Hearing Examiner who has had no prior

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ADM 110-32-5420

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connection with your case. Now, as you know after you filed your application for disability insurance benefits you had two denials made by the Bureau of Disability Insurance. Now, I am not bound by the prior denials in your case, but to the contrary, I will make a new and independent decision based on all of the evidence and the testimony here today. I will issue a written decision and a copy will be sent to you.

The hearing will be conducted by me by asking you questions and the answers will be made under oath. I will attempt to cover everything about your case by the questions I ask, but if you have anything in addition to add over and above what I ask you, well you will be given an opportunity to do so.

Now, you have looked at what we call the Exhibit File which contained all of the information and reports that we have about your case up until the time I set it for hearing, which are numbered 1 through 26, respectively. Now, will you agree for them to be formally made a part of your record to be considered along with the other evidence here today in arriving at a decision in your case?

CLAIMANT: Yes, sir.

EXAMINER: Very well, they will be admitted and so marked.

(Exhibits 1 through 26, previously identified, were received in evidence and made a part of the record herof.)

EXAMINER: Now, I'll tell you briefly what has happened thus far and what the issues are.

On April 14, 1970, you filed application alleging that due to a back injury and rib injury you became unable to work on December 10, 1969. Your application

A/A 140-32-5420

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was denied on September 22, 1970 and you filed a request for reconsideration on October 5, 1970. Then on November 6, 1970 it was again denied in a reconsideration determination. You filed your request for a hearing on January 19, 1971 and that's the reason the case is now before me as Hearing Examiner.

The question for decision, that is, the general issue in your case is whether you are entitled to disability insurance benefits under Section 223 of the Social Security Act, as amended, and whether a period of disability may be established under Section 216(i) of such Act. The specific issues on which I will make findings and conclusions are the nature and severity of your impairment, whether such impairment will or can be expected to be for at least 12 continuous months or result in death, your ability to engage in substantial gainful activity, the date of onset of disability, if found to exist, whether the special earnings requirement was met based on your employment and earnings and, if so, as of what dates.

The Claimant, DOUGLAS BUTURLA, having first been duly sworn, testified as follows:

EXAMINATION OF CLAIMANT BY HEARING EXAMINER:

Q All right, sir, I believe the record shows you are 28 years of age, is that correct?

A That is correct.

Q How far did you go in school, Mr. Buturla?

A 12 years.

Q Did you finish high school?

A Yes, I did.

Q Now, after your public school education did you ever have any

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additional education or any vocational trade or trade school training, anything of that nature?

A Had none.

Q Were you in military service?

A Yes.

Q All right, when were you in service, sir?

A From 1960 to 1962 I was in the reserve.

Q All right, now Mr. Buturla, I'm interested now in finding out from you about the kind of work that you've done throughout your work career up until the present time, what was the first work that you started doing when you finished high school?

A I went into the Navy right after graduation.

Q And how long--you were on active duty in the Navy?

A Right for 2 years.

Q All right, after you got out the Navy what was the first work you started doing?

A I believe it is the United Parcel Service.

Q And what kind of work did you do for them?

A Loading and unloading tractor trailer trucks.

Q All right, how long did you do that?

A Oh, about 3 or 4 months.

Q All right, what was the next work you did?

A Working for an exterminating company.

Q And what kind of work did you do for an exterminating company?

A Exterminating.

Q And all right, when you said you did that, I assume you treated residences and business buildings against termites, roaches and any kind of pest with sprays and so forth?

A That's correct.

Q Climb underneath houses and things like that. Did you have to do that?

A No.

Q And how long did you work for the exterminating company?

A I would say approximately a year.

Q All right, what was the next work you did?

A New York City Police Department.

Q All right, when did you first start with the Police Department?

A September of '65.

Q All right, now, is that the last work you did?

A Yes.

Q And how long did you continue with the Police Department?

A Presently, I am still a member of the force.

Q Yes, but when did you--when were you last on duty? Are you back to duty now?

A No.

Q All right, you were in an accident or some kind December--on or about December 10, '69, I believe, is that right?

A That's right.

Q Was that in connection with your work?

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A Yes, sir, it was.

Q Was it automobile--traffic accident?

A Automobile, right.

Q And you received various injuries--rib injuries, back injury?

A Yes.

Q Is that right? And you haven't returned to work since that time?

A Not to full duty, no.

Q Now, what do you mean by that? Have you returned to some kind of limited duty?

A Yes, I was sent to the limited duty section of the Police Department, where I tried some light duties they call, which is working at a desk which I tried for approximately a week and I just couldn't do it.

Q And about when was that?

A In October of '70.

Q And you haven't done anything since then, is that--that was the only time?

A Yes.

Q All right, now, you say you just couldn't do it, why, what bothered you that you couldn't do that limited duty with--

A Well, I would get severe pain in the back, the low back and down my right leg.

Q Now, do you draw some type of benefit from the Police because you are disabled for active duty?

A Benefits, no.

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Q You are not receiving any income from them?

A Oh, yes, I receive my regular pay from the Police Department.

Q And you will receive that until you are certified to go back--is able to go back, or do you know?

A Yes.

Q All right, Mr. Buturla, what--since you haven't been working as a policeman, just what are your activities now, what do you do to pass the time?

A Well, I'm restricted to the house by the Police Department. I can't leave the house. The only time I can leave the house is when I visit the police surgeon.

Q In other words, they have a requirement if you are not able to work you are not suppose to go out, is that--

A Right.

Q --is that it? And about how often do you--do you go to the police surgeon for medical attention?

A At least once every 2 weeks.

Q Are you taking any kind of medicine now, Mr. Buturla?

A Yes.

Q Do you know what you take?

A Colchicine for extreme pain, Talwin, Nembutal, I believe that's all.

Q Have you had any operation due to this injury?

A They have requested an operation but I haven't had it.

Q Now, you say you go to the police surgeon at least every 2 weeks.,

A/110-3420

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what does he do for you when you go to him?

A Tells me to come back in 2 weeks.

Q Well, does he examine--he examines you, I assume, when you go in there?

A On occasion because actually I'm under the care of my own physician, and this is more of a procedure you have to follow with the Police Department by visiting the surgeon.

Q All right, who is your own doctor that you see?

A Dr. Briggan.

Q And how often do you see Dr. Briggan?

A Presently, once a month.

Q And what does he do for you?

A Gives me an examination and recommends the operation.

Q Now, I take that they are recommending an operation that you don't want to have, is that what you are saying?

A Yes.

Q What kind of operation?

A A spinal fusion.

Q And you decided that you don't want to have this operation?

A Yes.

Q Any particular reason, or what is your reason that you don't want to have it?

A Well, first of all it's not a guaranteed operation, which I assume all operations are not guaranteed, but the odds on this being a success are very slight, and they tell me that I would more than likely have to come back for a second operation in 8 months, corrective surgery.

A/N 140-32-5120

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Q When were you first advised that you should have an operation, do you recall?

A I believe it was when I saw Dr. Bosworth in January of '71--no wait there, I saw Dr. Garvey, I don't remember, it was last year sometime and he told me then that an operation might be necessary, but it wasn't definitely determined until I saw Dr. Bosworth in January of '71.

Q All right, Mr. Buturla, tell me now, just what bothers you, what complaints you have?

A Well, I'm interested to bending, sitting, standing, get extreme pains down the leg into the toe.

Q Now, wait I don't think I understand you, you say you are restricted from or restricted to?

A Restricted from bending forward or back or to the side, and the pain in my back radiates down my buttocks down to the right leg into the foot.

Q You are restricted from bending when you started off--bending and what else, sitting you say?

A Well, I can't sit for long periods or stand for long periods--

Q Without having this pain?

A Pain--like the pain is always there and it builds up the longer I sit or the longer I stand.

Q All right, is there anything else that bothers you?

A No.

Q All right, Mr. Buturla, is there anything else that we haven't covered that you want to say, any additional testimony you want to make or any statement that you want to make?

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A Well, the only thing that I could think of that might be beneficial as far as the outfit goes and as far as the disability goes, right now the police surgeon has recommended to the Police Department that I be put on--out of the Police Department due to my injury.

Q Put out, you say?

A Out of the Police Department.

EXAMINER: All right, anything else?

CLAIMANT: That's about it.

EXAMINER: All right, Mr. Buturla, I don't think of anything else unless you think of something further the record will be closed and the hearing closed and--can you think of anything else you would like to say?

CLAIMANT: No, not right now.

EXAMINER: All right, then if there is nothing further the record will be closed, the hearing closed, I'll be sending you a written decision at least within 30 days from today, and I hope sooner, and thank you for coming in.

CLAIMANT: Okay.

#### C E R T I F I C A T I O N

"I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded by a closed microphone reporter at the hearing held in the above case before Hearing Examiner William V. Neilemar, Jr."

Transcriber Shelby H. Langley



## APPLICATION FOR DISABILITY INSURANCE BENEFITS

**NOTICE.** — (a) Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act, or (b) whoever, having received a payment for the use and benefit of another person, knowingly and willfully uses such payment for other than the person for whom it is received, is subject, under the Social Security Act, to a fine of not more than \$1,000, to 1 year's imprisonment, or both.

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SSA DIRECTOR'S OFFICE

I hereby apply for a period of disability and all insurance benefits payable to me under Title II of the Social Security Act, as amended.

|   |  |   |
|---|--|---|
| 1. Enter your full name   | (Check one)  | Enter your Social Security number<br>(If none or unknown so indicate) |
| <i>Douglas B. Turley</i>  | <input checked="" type="checkbox"/> Male<br><input type="checkbox"/> Female                    | <i>140 32 5420</i>  |
| 2. Enter your date of birth<br>(Show month, day, and year)<br><i>3/31/13</i>  | Enter the name of the State or Foreign Country where you were born<br><i>Jersey City, N.J.</i> |   |
| 3. (a) Have you (or has someone on your behalf) ever filed an application for monthly social security benefits before?<br><br><input type="checkbox"/> Yes (If "Yes," answer (b), (c), and (d).) <input checked="" type="checkbox"/> No (If "No", go on to item 4.) |  |   |
| (b) Kind of claim filed   |  |   |
| (c) Enter name of person on whose earnings record you filed other application(s)  | (d) Enter Social Security Number of person named in (c)<br>____-____-_____                     |   |
| 4. What is your disability? (Briefly describe your impairment, that is, the injury or illness that prevents, or has prevented, you from working.)<br><br><i>Back injury &amp; rib injury</i>  | DATE (Month, day, and year)<br><i>12/10/69</i>   |   |
| 5. (a) When did you become unable to work because of your disability?   | DATE (Month, day, and year)<br><i>12/10/69</i>   |   |
| (b) Are you still disabled?<br><br><input checked="" type="checkbox"/> Yes (If "Yes," go on to item 6.) <input type="checkbox"/> No (If "No," answer (c).)  | DATE (Month, day, and year)  |   |
| (c) If you are no longer disabled, enter the date you were again able to work.<br>_____   |  |   |
| 6. Check the first block which applies to you.  |  |   |
| (a) <input type="checkbox"/> Confined in a medical institution other than a general hospital  | (d) <input type="checkbox"/> Confined in a chair (Including wheel chair)                       |   |
| (b) <input type="checkbox"/> Patient in a general hospital  | (e) <input type="checkbox"/> None of the above but unable to go outside                        |   |
| (c) <input type="checkbox"/> Confined in bed at home  | (f) <input type="checkbox"/> Able to go outside but only with help of another person or device |   |
|   | (g) <input checked="" type="checkbox"/> Able to go outside without help                        |   |

| 7. (a) Have you filed (or do you intend to file) a claim for disability benefits under any workmen's compensation law or plan?  |  | <input type="checkbox"/> Yes                              | <input checked="" type="checkbox"/> No | 23   |   |
|---|--|---|--|--|---|
| (If "Yes," answer (b). If "No," go on to item 8.)   |  |   |  |  |   |
| (b) If you have filed such a claim, has there been a decision on the claim?   |  | <input type="checkbox"/> Yes                              | <input type="checkbox"/> No            |  |   |
| (If "Yes," answer (c). If "No," go on to item 8.)   |  |   |  |  |   |
| (c) Enter the amount of the weekly payment made to you . . . . .  |  | AMOUNT  | \$                                     |  |   |
| (If you are receiving or have received payments on other than a weekly basis, such as bi-weekly or monthly payments, or if you have received a lump-sum payment based on your workmen's compensation claim, please indicate in "Remarks" and include the amount of such payment or payments.)   |  |   |  |  |   |
| 8. Did you work in the railroad industry any time on or after January 1, 1937?  |  | <input type="checkbox"/> Yes                              | <input checked="" type="checkbox"/> No |  |   |
| (a) Were you in active military or naval service after September 7, 1939?   |  | <input checked="" type="checkbox"/> Yes                   | <input type="checkbox"/> No            |  |   |
| (If "Yes," answer (b) and (c). If "No," go on to item 10.)  |  |   |  |  |   |
| (b) Enter name of branch (Army, Navy, etc.), country served (if other than U.S.) and dates of service.  |  | U.S. Navy 9/61 - 9/63                                     |  |  |   |
| (c) Have you received, or do you expect to receive, a benefit from any other Federal agency?  |  | <input type="checkbox"/> Yes                              | <input checked="" type="checkbox"/> No |  |   |
| (If "Yes," enter the names of all such agencies.)   |  |   |  |  |   |
| 10. • Enter the names and addresses of all the persons, companies or government agencies for whom you worked during the last 12 months.<br>• If you worked in agricultural employment, give this information for this year and last year.<br>• If you were not employed during the past 12 months, enter the information for your last period (no matter how long) of employment. |  |   |  |  |   |
| NAME AND ADDRESS OF EMPLOYER  |  | WORK BEGAN  |  | WORK ENDED<br>(If still working<br>show "Not Ended")                                       |   |
|   |  | Month   | Year                                   |  | Month   |
| N.Y. City Police Dept - 100 Central St.<br>Motorcycle Present #12 - S2 May  |  | 9/10  | /65                                    | 12/10/65   |   |
|   |  |   |  | Still on full pay.   |   |
| (If you need more space, use "Remarks" space on the back page.)   |  |   |  |  |   |
| 11. May the Social Security Administration or the State agency reviewing your case ask your employers for information needed to process your claim?   |  |   |  |  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 12. Were you self-employed this year, last year, or the year before?<br>(If "Yes," answer question 13. If "No," go on to item 14.)  |  |   |  |  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 13. Check the year or years in which you were self-employed.  |  | In what kind of trade or business were you self-employed? |  | Were your net earnings from your trade or business \$400 or more?<br>(Check "Yes" or "No") |   |
| <input type="checkbox"/> This Year  |  |   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No                                   |   |
| <input type="checkbox"/> Last Year  |  |   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No                                   |   |
| <input type="checkbox"/> Year Before Last   |  |   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No                                   |   |

|   |   |  |   |   |  |
|---|---|--|---|---|--|
| 14.   | How much were your total earnings last year? (Count both wages and self-employment income. If none, write "None")   |  |   | \$780   | <input type="checkbox"/>               |
| 15.   | How much have you earned so far this year? (If none, write "None")  |  |   | \$0   | <input type="checkbox"/>               |
| 16.   | (a) Are you married?<br>(If "Yes," give the following information about your wife or husband.)  |  |   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |  |
|   | WIFE'S MAIDEN NAME OR HUSBAND'S NAME  | DATE OF BIRTH<br>(If unknown show age)       | DATE OF MARRIAGE  | If husband or wife is age 62 or over or is filing for disability benefits, enter his or her Social Security No. |  |
|   | Patricia McFayden P   | 3/25/46                                      | 7/5/69  | 084-36-7503   |  |
| 17.   | (b) If you are a married woman, was your husband receiving at least one-half of his support from you at the time you became unable to work because of your disabling condition, or is he receiving at least one-half of his support from you now?             |  |   | <input type="checkbox"/> Yes  | <input type="checkbox"/> No            |
| 17.   | Your unmarried children (including natural children, adopted children, and stepchildren) may be eligible for benefits based on your earnings record if they are now, or were, in the past 12 months:  |  |   |   |  |
|   | <ul style="list-style-type: none"> <li>• under age 18</li> <li>• age 18 to 22 and attending school</li> <li>• age 18 or over and under a disability (which must have begun before age 18)</li> </ul>  |  |   |   |  |
|   | If you have children who may qualify for benefits under any of the above conditions, answer (a) and (b).  |  |   |   |  |
|   | (a) Name of each such child   |  |   |   |  |
|   | NAME OF CHILD<br>None   | NAME OF CHILD<br>Suzanne                     |   |   |  |
|   | (b) Do you wish to apply, on behalf of all the children named in item 17(a) for all insurance benefits payable to them under Title II of the Social Security Act, as amended? (You may apply even though you do not wish to be payee for a child's benefits.) |  |   | <input type="checkbox"/> Yes  | <input type="checkbox"/> No            |
|   | (If "No," enter under "Remarks" the name of each child for whom you are not applying and give your reasons.)  |  |   |   |  |
| 18.   | Answer question 18 only if you are married and your husband or wife is applying for benefits.   |  |   |   |  |
|   | (a) Check (✓) whether your marriage was performed by:<br>Clergyman or authorized public official <input checked="" type="checkbox"/> , or other <input type="checkbox"/>  |  |   | (Explain)   |  |
|   | (b) Were you married before your present marriage?  |  |   | <input checked="" type="checkbox"/> Yes   | <input type="checkbox"/> No            |
|   | (If "Yes," give the following information about each of your previous marriages.)   |  |   |   |  |
| PREVIOUS MARRIAGE   | TO WHOM MARRIED<br>Fenda Serio  | WHEN (Month, day, and year)<br>9/28/63       | WHERE (Enter name of city and State)<br>Bayonne, NJ         |   |  |
|   | HOW MARRIAGE ENDED<br>Divorce   | WHEN (Month, day, and year)<br>June 10, 1969 | WHERE (Enter name of city and State)<br>Cudah Jezuz, Mexico |   |  |
| PREVIOUS MARRIAGE   | TO WHOM MARRIED   | WHEN (Month, day, and year)                  | WHERE (Enter name of city and State)                        |   |  |
|   | HOW MARRIAGE ENDED  | WHEN (Month, day, and year)                  | WHERE (Enter name of city and State)                        |   |  |
| (Use "Remarks" space for information about any other marriage.) |   |  |   |   |  |
| 19.   | Do you have a dependent parent who was receiving at least one-half of his or her support from you at the time shown in item 5(a) when you became unable to work because of your disability?   |  |   | <input type="checkbox"/> Yes  | <input checked="" type="checkbox"/> No |

(Over)

20. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review this application or your continuing disability, any medical records or other information about your disability?  Yes  No

The events listed below may affect your entitlement to disability insurance benefits:

- Your MEDICAL CONDITION IMPROVES so that you would be able to work, even though you have not yet returned to work.
- You GO TO WORK whether as an employee or a self-employed person.
- You apply for periodic benefits under any workmen's compensation law or plan.

If you are now hospitalized —

- You are DISCHARGED FROM THE HOSPITAL.

21. Do you agree to notify the Social Security Administration promptly if any of the above events occur?  Yes  No

Answer question 22 only if (a) you are at least age 62 (or are a widow at least age 60) AND (b) you are not currently entitled to a reduced old-age insurance benefit or a reduced widow's insurance benefit. Persons at least age 62 (or widows at least age 60) may be eligible for reduced retirement benefits. If you accept such reduced benefits your payments will be permanently reduced. The amount of reduction will depend upon several factors such as, your age, whether or not your claim for disability insurance benefits is allowed, and the first month of your entitlement to benefits.

22. Do you wish this to be considered an application for any reduced benefits for which you may be eligible?  Yes  No

REMARKS: (This space may be used for explaining any answers to the questions. If additional space is required, attach separate sheet.)

*Still on full pay of 10,500 a year until some decision is made about  
ever going back to work.  
My wife is pregnant, & is expecting on August, 1974.*

IMPORTANT INFORMATION. PLEASE READ CAREFULLY. — A claimant for disability insurance benefits is required to submit medical evidence showing the nature and extent of his disability during the time he alleges he was under a disability. If such evidence is not sufficient to arrive at a determination, he may be requested to have an independent medical examination at the expense of the Social Security Administration. Should Social Security obtain information useful to his physician for treatment, such information may be furnished to him.

Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

| SIGNATURE OF WITNESSES  | SIGNATURE OF PERSON MAKING STATEMENT   |
|---|--|
| If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses. | SIGNATURE (First name, middle initial, last name)<br>(Write in ink)                      |
| 1. SIGNATURE  | SIGN HERE <i>Donald Butler</i>   |
| ADDRESS (Number and Street, City, State and ZIP Code)   | MAILING ADDRESS (Number and Street, P.O. Box, or Rural Route)<br><i>422 Cromwell Ave</i> |
| 2. SIGNATURE  | CITY AND STATE <i>Staten Island NY</i> ZIP CODE <i>10305</i>                             |
| ADDRESS (Number and Street, City, State and ZIP Code)   | DATE (Month, day, and year) <i>4/4/70</i> TELEPHONE NUMBER <i>979-0213</i>               |
| ENTER NAME OF COUNTY (if any) IN WHICH YOU NOW LIVE<br><i>Richmond</i>  |  |

#### STATEMENT BY WIFE OR DEPENDENT HUSBAND OF DISABLED PERSON

The wife or dependent husband of an applicant for disability insurance benefits should answer the following question if present when this application is completed, and is at least age 62, or, in the case of a wife under age 62, has in her care any child named in item 17 who is under age 18 or disabled.

Do you desire this application to be an application for any social security benefits payable to you?

Yes  No

SIGNATURE OF WIFE OR DEPENDENT HUSBAND (Write in ink)

39

26

A COMPLETED APPLICATION  
FOR SOCIAL SECURITY NUMBER  
REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT  
ADMINISTRATION DISTRICT OFFICE

PRINT IN BLACK OR DARK BLUE INK OR USE TYPEWRITER FOR ALL ITEMS EXCEPT SIGNATURE. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT KNOWN, WRITE "UNKNOWN".

DO NOT WRITE IN THE ABOVE SPACE

14-0-32-5420

|  |  |  |   |  |   |                              |  |
|--|--|--|---|--|---|------------------------------|--|
| PRINT NAME YOU GAVE YOUR PARENT  |  | FIRST NAME   |   | MIDDLE NAME (IF YOU USE NO MIDDLE NAME OR INITIAL, DRAW A LINE)                                |   | LAST NAME                    |  |
| 1  | EMPLOYER, OR, IF UNEMPLOYED, THE<br>NAME YOU WILL USE WHEN EMPLOYED                      | Douglas John   |   |  |   | Butwala                      |  |
| 2  | MAILING ADDRESS (NO. AND ST., P. O. BOX, OR RD.) (CITY) (ZONE) (STATE)                   |  |   | PRINT FULL NAME GIVEN YOU AT BIRTH   |   |                              |  |
| 3  |  |  |   | Douglas John Butwala   |   |                              |  |
| 4  | AGE ON LAST BIRTHDAY   | DATE OF BIRTH (MONTH)  | (DAY)   | (YEAR)   | PLACE OF BIRTH (CITY)                             | (COUNTY)                     | (STATE)  |
| 5  | 14   | March  | 31  | 1943   | Jersey  | Hudson                       | N.J.   |
| 6  | FATHER'S FULL NAME, REGARDLESS OF WHETHER LIVING OR DEAD                                 | John Butwala   |   | MOTHER'S FULL NAME BEFORE EVER MARRIED, REGARDLESS OF WHETHER LIVING OR DEAD                   |   | Anne Gretchen                |  |
| 7  | (MARK <input type="checkbox"/> WHICH)<br>MALE <input checked="" type="checkbox"/> FEMALE | (COLOR <input type="checkbox"/> WHICH) IF OTHER, SPECIFY<br>OR<br>WHITE NEGRO OTHER<br>RACE <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |   | HAVE YOU EVER BEFORE APPLIED<br>FOR OR HAD A SOCIAL SECURITY OR<br>RAILROAD RETIREMENT NUMBER? |   | YES <input type="checkbox"/> | (MARK <input type="checkbox"/> WHICH)<br>NO <input checked="" type="checkbox"/> DONT KNOW <input type="checkbox"/> |
| 8  | BUSINESS NAME OF EMPLOYER. IF UNEMPLOYED, WRITE "UNEMPLOYED"                             |  | 11  |  | STATE   | DATE                         |  |
| 9  | Employer's Address (No. and Street) (City) (Zone) (State)                                |  | IF ANSWER IS "YES", PRINT THE<br>STATE IN WHICH YOU FIRST<br>APPLIED AND WHEN |  | ALSO PRINT YOUR ACCOUNT<br>NUMBER IF YOU KNOW IT  |                              | ACCOUNT NUMBER   |
| 10   |  |  |   |  |   |                              |  |
| 11   |  |  |   |  |   |                              |  |
| 12   |  |  |   |  |   |                              |  |
| 13   | TODAY'S DATE   |  | 14  |  | WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT) |                              |  |
| May 20, 1957   |  |  |   | Douglas Butwala  |   |                              |  |
| FORM SS-5 TREASURY DEPARTMENT INTERNAL REVENGE SERVICE (Revised 7-55) 14-0-32-5420 |  |  |   |  |   |                              |  |

EXHIBIT 2





41

38

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SOCIAL SECURITY ADMINISTRATION

BALTIMORE, MARYLAND 21241

REFER TO: 140-32-5420  
WHEN WRITING TO:  
SOCIAL SECURITY OFFICE

September 22, 1970

Mr. Douglas Buturla  
422 Cromwell Avenue  
Staten Island, NY 10305

Dear Mr. Buturla:

We have determined that you are not entitled to disability insurance benefits because you do not meet the disability requirement of the law. In reaching this decision we considered how much your condition has affected your ability to work. After carefully studying the records in your case, including the medical evidence and your statements, it has been determined that you are not expected to be disabled for a continuous period of at least 12 months. Therefore, you do not meet the disability requirement of the law. If your condition does not improve as expected and continues to prevent you from doing any substantial gainful work, please notify your social security office.

According to the amounts credited to your social security account at the time you filed your application, you meet the earnings requirement for disability purposes until December 31, 1974. Any additional earnings which may be credited to your account after the time you applied may, of course, extend this date. An explanation of the disability requirement and the earnings requirement is given on the back of this notice.

If you believe that this determination is not correct, you may request that your case be re-examined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make any such request through your social security office. If additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the determination made on your claim.

If you have any questions about your claim, you should get in touch with your social security office. If you call in person, please take this notice with you.

Sincerely yours,

EXHIBIT 4

F. H. Sheel  
Director, Division of Evaluation  
and Authorization  
Bureau of Disability Insurance

Enclosure:  
SST 58

## IMPORTANT INFORMATION

Under the Social Security Act, a person may qualify for disability insurance benefits only if he meets both the earnings requirement and the disability requirement of the law. The information below explains these requirements.

### The Earnings Requirement:

- A person whose disability began before age 24 meets the earnings requirement if he has social security credits for 6 calendar quarters ( $1\frac{1}{2}$  years) of work during a 12-quarter (3-year) period ending with a quarter before age 24 in which he is disabled.
- A person whose disability began between the ages 24 and 31 meets the earnings requirement if he has social security credits for work in at least one half of the calendar quarters in the period beginning with the calendar quarter after age 21 and ending with a quarter before age 31 in which he is disabled.
- A person whose disability began at age 31 or later meets the earnings requirement if he has social security credits for 20 calendar quarters (5 years) of work during a 40-quarter period (10 years) ending in or after a quarter in which he is disabled.

If a person does not have credit for the amount of work shown above he is not eligible for disability insurance benefits.

### The Disability Requirement:

A person may be considered disabled only if he is unable to perform any substantial gainful work due to a medical condition which has lasted or can be expected to last for a continuous period of at least 12 months. His impairment must be so severe as to prevent him from working not only in his usual occupation but in any other substantial gainful work considering his age, education, training, and work experience.

The decision on your claim was made by the Social Security Administration on the basis of a disability determination by an agency of the State in which you live. Physicians and other trained disability evaluation personnel in the State agency participate in making such determinations.

Definitions of disability are not the same in all government and private disability programs. Government agencies must follow the particular laws which apply to their disability programs. Therefore, a finding by a private organization or another government agency that a person is disabled would not necessarily mean that he meets the disability requirement of the Social Security Act.

No benefits may be paid to the wife, husband, or child unless the wage earner or self-employed person is entitled to disability insurance benefits.

This notice concerns only your disability application. It is not a decision as to whether retirement, survivors, or hospital and medical insurance benefits are payable.



(Do not write in this space)

|  |  |
|--|--|
| REQUEST FOR RECONSIDERATION  |  |
| NAME OF WAGE EARNER OR SELF EMPLOYED PERSON<br><i>Douglas Butterla</i>                                 | SOCIAL SECURITY CLAIM NUMBER<br><i>140-32-5420</i> |
| NAME OF CLAIMANT<br><i>Douglas Butterla</i>  |  |
| CLAIM TYPE (Specify type, e.g., retirement, disability, hospital insurance, etc.)<br><i>disability</i> |  |
| OCT 5 1970<br>EXHIBIT 5  |  |

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are: *The injury in my back and right side and the pains going down my right leg prevent my working at this time.*

70 OCT 13 NY 10.22

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):  
*M/E - Drs Hospital*

|   |   |
|---|---|
| SIGNATURE OF WITNESSES ONLY   |   |
| If this request has been signed by mark (X), two witnesses who know the person requesting reconsideration must sign below, giving their full addresses. |   |
| 1. NAME   | SIGNATURE (Write in Ink—First, Middle Initial, Last Name)<br><i>Walt Butterla</i>                         |
| ADDRESS (Number and Street, City, State and Zip Code)   | MAILING ADDRESS (Number and Street, P.O. Box or Route)<br><i>422 Cromwell Ave<br/>Staten Is, NY 10305</i> |
| 2. NAME   | CITY AND STATE<br><i>Staten Is, NY</i> ZIP CODE<br><i>10305</i>   |
| ADDRESS (Number and Street, City, State and Zip Code)   | DATE (Month, Day, and Year)<br><i>10/5/70.</i> TELEPHONE NUMBER<br><i>979-0213</i>                        |

## FOR SOCIAL SECURITY OFFICE USE ONLY

|                          |                              |                                |
|--------------------------|------------------------------|--------------------------------|
| PROVIDER NAME AND NUMBER | INTERMEDIARY NAME AND NUMBER | SOCIAL SECURITY OFFICE ADDRESS |
|                          |                              |                                |
|                          |                              |                                |

|  |   |   |
|--|---|---|
| ROUTING<br>INSTRUCTIONS<br>(Check one) | <input type="checkbox"/> State Agency (Route with disability folder)<br><input type="checkbox"/> Payment Center _____ BDI, Balto. <input type="checkbox"/><br><input type="checkbox"/> BHI, RO _____ BHI, Attn: DRB, Balto. | <input type="checkbox"/> Division of Foreign Claims, Balto.<br><input type="checkbox"/> BDPA, Attn: CWAB, Balto.<br><input type="checkbox"/> Intermediary |
|--|---|---|

DISABILITY DETERMINATION  
AND TRANSMITTAL

3 W/E (If Auxiliary Filing)

OASI  
W/EDIB  
W/E

1. FOLDER TO:

DOI

SA

DFC

2. DATE APPROVED

4/14/70

5. NAME AND ADDRESS OF CLAIMANT

Douglas Buturla  
422 Cromwell Avenue  
Staten Island, New York 10305

4. SOCIAL SECURITY ACCOUNT NUMBER

140-32-5420

41

6 DB

7 SEX

8. W

N

O

9 AOD

10.

AT AGE

3/31/43

M

F

12/10/69

21

11. CLAIM FOR

FREEZE

DIB

CHILD

DWB

MAP

SG

NO CHILDREN

(UNDER 18)

13 OC REC

LAST MET

MAP

SG

NO CHILDREN

(UNDER 18)

12/13/70

21

14.  W/E DOES NOT MEET 20/40 REQ.A.  DIS. DOI REVIEWB.  SINCE LAST DET.

15. PREV. DENIED OR TERM.

16. NON-DIS. DEV. IN PROGRESS

17. MED. DEV. DEF.

18. S/A CODE

19. STATE

330

NY

20. DISTRICT OFFICE ADDRESS

595 Forest Avenue  
Staten Island, NY 10310

DO CODE

RO CODE

121

21

FILE REVIEWED &amp; APPROVED FOR TRANSMITTAL

23. REMARKS

24. CLAIMS REPRESENTATIVE

22. DATE OF TRANSMITTAL

PREScribed PERIOD

PURSUANT TO PROVISIONS OF SEC. 221 OF SOCIAL SECURITY ACT, IT IS DETERMINED THAT THE CLAIMANT:

25.  HAS BEEN UNDER A  
DISAB SINCE25.  WAS UNDER A DISAB.  
A DATE FROM \_\_\_\_\_ B TO \_\_\_\_\_26.  WAS NOT UNDER  
A DISAB. ON OR BEFORE  
(Date)

29. DIAGNOSIS

Ligamentous Sprain of  
dorsolumbar spine27.  WAS NOT UNDER  
A DISAB.28. CASE OF BLINDNESS AS DEFINED IN SEC. 216(i)  
A.  NOT UNDER A DISAB.  
FOR CASH BENE PUPR. B.  UNDER A DISAB FOR  
CASH BENE PUPR. SINCE

30. MOB CODE

C

31. VOCATIONAL BACKGROUND (Occupation)

Biscerner

OCC. YEARS

4

EDUC. YEARS

12

32. BASIS FOR DETERMINATION

15026

 CONTINUED ON ATTACHED SHEET (Use DA-834)

33. RECOMMEND RE EXAM ON (Date)

34. DISABILITY EXAMINER SA  
(Cohen)

35. DATE

36. REVIEW PHYSICIAN SA

37. DATE

Reeher

10/10/70

38.  CHILD'S DISABILITY BEGAN BEFORE AGE 18  
AND CONTINUES

39. TO BE COMPLETED BY SSA

40. A PERIOD OF DISABILITY IS

 CHILD NOT UNDER A DISABILITY WHICH  
BEGAN BEFORE AGE 1841.  WIE MEETS 20/40 TEST IN 12/69 QTR

42. ESTABLISHED FROM \_\_\_\_\_ TO \_\_\_\_\_

NOT ESTABLISHED

41. REMARKS

T his action reissues OA-283109 9/15/70.

42. RE-EXAM REQ.

43. DISABILITY EXAMINER

44. DATE

45. DISABILITY EXAMINER

46. DATE

47.  DOI

48. LTIFPAH NO

DL

49. PRIOR ACT

50. PT

51. REVIEW

52. BASIS  
CODE53. RETURN  
CODE

54. CAT

55. SPECIALIST  
CODE

56. DATE

56. DIB

57. CSF

58. VA

59. CH

60. FH

61. VAD

FORM DA 17-601

1-FOLDER COPY

6-1 page 1

CONTINUATION SHEET  
FOR DISABILITY DETERMINATION

CC:eam RCH-1

NOTE.--Use this form only when necessary for continuation of item 32 of "DISABILITY DETERMINATION" or "CESSATION OR CONTINUANCE OF DISABILITY".

|                         |  |                                       |                 |
|-------------------------|--|---------------------------------------|-----------------|
| NAME<br>Douglas Buturla | NAME OF WAGE EARNER(IF AUXILIARY FILING) | SOCIAL SECURITY NUMBER<br>140-22-5020 | DATE<br>4/15/70 |
|-------------------------|--|---------------------------------------|-----------------|

The statement of evidence in the determination of 9/15/70, except as modified herein, is hereby incorporated by reference, but not the inferences, findings or conclusion thereon. A2

The claimant applied on 4/14/70, stating that he has been unable to work since 12/10/69, due to a back and rib injury.

Medical evidence shows that the claimant was hospitalized on 12/10/69 following an automobile accident. X-rays were negative and there were no neurological findings, although there was pain on straight leg raising. Diagnosis was ligamentous sprain of the dorsal lumbar spine and contusion of the right lower ribs. Further evidence showed that the claimant was seen in consultation on 4/6/70, at which time he had restricted trunk movements with the same diagnosis.

The claimant applied for reconsideration of his claim on 10/5/70, stating that injury to his back and right side and pains going down his right leg prevented him from working.

The claimant submitted an additional report which showed that he was rehospitalized from 6/19/70 to 7/10/70 still complaining of the pain in the lower back with radiation to both shoulders and inability to sit for any length of time. There was also aching of the right hip. On examination, there was restricted trunk movement and tenderness of the lower back with pain on straight leg raising with restriction. There were no definite neurological findings noted. EMG studies were negative. He was discharged on 7/10/70, somewhat improved. Diagnosis was ligamentous sprain of the dorsal lumbar spine with residual symptoms still present.

The claimant is a 27 year old man with a high school education, who has worked as a policeman. He has also worked as a storekeeper and exterminator.

Medical evidence shows that the claimant has a ligamentous sprain of the dorsal lumbar spine with residuals. However, it is felt that there is no medical evidence to establish that he would be unable to return to work. Accordingly, this claim is denied.

This revises the previous determination of 9/15/70.



46

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BALTIMORE, MARYLAND 21241

43

BUREAU OF  
DISABILITY INSURANCE

REFER TO:

DI:R:2G  
140-32-5420

NOV 6 1970

## NOTICE OF RECONSIDERATION DETERMINATION

Mr. Douglas Buturla  
422 Cromwell Avenue  
Staten Island, New York 10305

Dear Mr. Buturla:

In view of your request for reconsideration, all the information about your claim has been carefully evaluated. It has been determined that the previous decision was proper under the law.

In applying for disability benefits, you stated that you became unable to work since December 10, 1969, at age 26, because of back and rib injuries. Your record reveals you completed the twelfth grade and were formerly employed as a storekeeper, exterminator, and as a policeman.

The medical evidence in your file consists of reports from your attending and examining physicians, and the results of hospital records. This shows a history of hospitalization in December 1969 for injuries received as the result of an automobile accident. Initial X-rays were negative without evidence of fracture or dislocations. While your condition did improve with treatment, medical reports reveal hospitalization in June 1970 because of continuing symptoms. However, you were discharged in a somewhat improved state in July 1970, without serious disease of the musculoskeletal system. There is no evidence of the presence of any other serious impairment of your general health.

We realize you experience some physical difficulties that responded satisfactorily to treatment and have not resulted in any deformity, abnormality, or permanent damage. Therefore, on the basis of the total evidence, it is determined that you do not have a condition, or a group of conditions of such severity as to prevent you from performing work activity consistent with your experience and background.

If you believe that the reconsideration determination is not correct, you may request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. If you want a hearing,

FMS:whh:sas 11-1-70

EXHIBIT

7/2 page 6/3/1970

2

you must request it not later than 6 months from the date of this notice. You should make any such request through your social security office. Read the enclosed leaflet BHA-1 for a full explanation of your right to appeal.

Robert J. Duvall  
Director, Division of Reconsideration

Enclosures (2)

ADDITIONAL INFORMATION ABOUT  
YOUR RECONSIDERATION DECISIONWho reviewed your claim

Your claim was thoroughly re-evaluated by a physician and a disability examiner in your State agency which works with us in making disability determinations. This new evaluation was then independently reviewed in the Social Security Administration.

What is the definition of disability

A person may be considered disabled only if he is unable to perform any substantial gainful work due to a medical condition which has lasted or can be expected to last for a continuous period of at least 12 months. His impairment must be so severe as to prevent him from working not only in his usual occupation but in any other substantial gainful work considering his age, education, training and work experience.

There are many disability programs, government and private, under which an individual may become entitled to disability benefits on the basis of a physical or mental impairment. Although many of the programs are similar in concept, each agency must be guided by its own laws and eligibility rules in preparing a determination as to disability. Thus, a finding of disability by one or more of the many government agencies and private organizations administering disability programs would not necessarily mean that the individual would be found disabled within the meaning of the Social Security Act.

What are your further rights

If you disagree with this reconsideration decision, you may request a hearing as explained in this letter. (This is not a decision as to whether benefits will be payable to you at retirement age.)

If your condition should get worse, you should get in touch with your social security office about whether you could be entitled to disability benefits.

If you have questions about your claim, you should get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit the office, however, please take the enclosed letter with you.

REQUEST FOR HEARING

Take or mail original and copies to your local Social Security office.

CLAIMANT'S NAME

DOUGLAS BUTURLA

WAGE EARNER'S NAME (Leave blank if same as above)

SOCIAL SECURITY NUMBER

140-32-5420

I disagree with the determination made on the above claim and request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. My reasons for disagreement are:

that I need a spinal fusion operation and cannot work.

Check one of the following:

- I have additional evidence to submit.  
(Attach such evidence to this form or forward to the Social Security Office within 10 days.)  
 I have no additional evidence to submit.

Check ONLY ONE of the statements below.

- I wish to appear in person before the hearing examiner.  
 I waive my right to appear and give evidence, and hereby request a decision on the evidence before the hearing examiner.

Signed by: (Either the claimant or representative should sign. Enter addresses for both. If claimant's representative is not an attorney, complete Form SSA-1696)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE

CLAIMANT'S SIGNATURE

ADDRESS

CITY, STATE, AND ZIP CODE

ADDRESS

CITY, STATE, AND ZIP CODE

TELEPHONE NUMBER

DATE:

TELEPHONE NUMBER

Claimant should not fill in below this line

Is this request filed within 6 months of the reconsideration determination?  Yes  No  
If "No" is checked: (1) attach claimant's explanation for delay, (2) attach any pertinent letter, material, or information in the Social Security Office.

ACKNOWLEDGMENT OF REQUEST FOR HEARING

Your request for a hearing was filed on 1/14/71 at 5PM 1/17/71  
The hearing examiner will notify you of the time and place of the hearing at least 10 days prior to the date which will be set for the hearing.

|                       |  |
|-----------------------|--|
| Hearing Examiner Copy | TO:<br><input checked="" type="checkbox"/> Hearing Examiner _____  |
| Claim File Copy       | TO:<br><input checked="" type="checkbox"/> Hearing Examiner-Disability file in BDI TELETYPE BDI, BALTIMORE, MD. <i>Det 1/16/</i><br><input type="checkbox"/> Payment Center _____ (Location)<br><input type="checkbox"/> BHI _____ (Location)<br><input type="checkbox"/> DFC (BSI) <input type="checkbox"/> CWAB (RDPA)<br>Interpreter Needed _____ |

For the Social Security Administration

*Dan R. Epstein*  
By: \_\_\_\_\_  
595 7th Avenue  
(Signature) (Title)  
Albion, NY 10310  
(City) (State) (ZIP Code)

Servicing District Office Code

*E. Hill Bldg. 8*

REPORT OF DISABILITY INTERVIEW  
(Write Legibly)

OFFICE  
State: Florida  
CONTACT MADE  
 IN PERSON  
 TELEPHONE

DATE  
4/4/70  
Army  
PLACE OF CONTACT  
 DO  CS  
 HOME  OTHER

ACCOUNT NUMBER

740-32-5420

CLAIMANT'S NAME

Dwight Cas Baturka

WAGE EARNER'S NAME (If not the claimant)

PERSON(S) CONTACTED

 CLAIMANT  OTHER (If other, show name, address and relationship to a claimant.)

|  |  |   |                               |  |
|--|--|---|-------------------------------|--|
| NATURE OF INJURY OR ILLNESS<br>Sprained back - L- & L5 |  | CURRENT AGE<br>27   | HIGHEST GRADE COMPLETED<br>12 | OTHER TRAINING                               |
| JOB TITLE (Principal occupation)<br>Policeman          |  | TYPE OF BUSINESS OR INDUSTRY<br>NYC5 Police Dept              |                               | INTERVIEWER'S SIGNATURE<br>H. L. Cooley      |
| I. ONSET OF IMPAIRMENT                                 |  | a. DATE INJURY OR ILLNESS FIRST BOthered CLAIMANT<br>12/10/69 |                               | b. DATE CLAIMANT STOPPED WORKING<br>12/10/69 |
|  |  |   |                               | c. AOD<br>12/10/69                           |

Describe effect of impairment on work when condition first bothered claimant.

- Symptoms
- Job duties
- Working conditions
- Attendance

While performing my duties as a police officer, I was hit by another car & injured his back & right shoulder. Immediately was taken by ambulance to Doctors Hospital on ST. Traumatic onset.

Describe significant changes (with dates) until work stopped.

- Symptoms
- Job duties
- Working conditions
- Attendance

Give claimant's reasons for stopping work.

Explain if AOD later than date claimant stopped work.

Has claimant worked since the alleged onset date? (If "Yes," complete Form OA-D821.)

 YES NO

IF ANY APPLY, THE DECISION WILL MOST LIKELY REST ON THE MEDICAL REPORTS OR SGA.

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Is engaging in SGA  | <input type="checkbox"/> Alleges progressive cancer                | <input type="checkbox"/> Has lost a leg because of diabetes or Buerger's disease |
| <input type="checkbox"/> Is hospitalized for a condition related to the alleged disability | <input type="checkbox"/> Is unable to speak, or to see, or to hear | <input type="checkbox"/> Has lost use of a leg because of a fracture or sprain   |
| <input type="checkbox"/> Loss of use of at least two limbs                                 |  |  |

EXHIBIT *[Signature]*

EXHIBIT

X Yes 

Handwriting  
difficulty  
or difficulty  
using hands  
or arms  
work impaired.

Patient has difficulty writing and reading, difficulty using hands.

Physical therapy

May bending down on floor, can lean back, no problem.  
Bending over begins to cause lower back, along spine  
-> shoulder blades.

Can't stand on legs too long without pain developing  
after lower back

Has brought a much to doctor's office where a physician  
diagnosed her best treatment & management was  
a corset all the time, sleep when sleeping. Can't do any foot work  
& exercises at home. Sleep from bed with flannel board inserts.

Told not to lift anything or do much activity,  
All physical exercise stopped

#### IV. DAILY ACTIVITIES

All is handled all financial needs handled by  
wife on Bureau of Street. Wifey does most of work, &  
all house cleaning, cleaning & shopping. Also wife  
to drive car

Apprentice some flying around, house

Physician placed  
limitations  
 Bed rest  
 Special  
therapy  
 Diet  
 Restricted  
activity  
 Etc.

Describe activ-  
ities of a typical  
day  
 Physical  
 Mental  
 Contact with  
others

Describe assist-  
ance required  
in caring for  
personal needs.

Describe current  
living arrange-  
ments.

- Is house confined because of a  
 Mental illness  
 Severe, chronic disease  
 Loss of 2 limbs, or severe speech or memory defect  
 Vision loss due to one eye  
 Inability to use one limb

#### (Section VII) and (C) of Sections V and VI Only - See Observations

- P. limb ataxia with marked tremors or  
propulsive gait  
 Multiple sclerosis with staggering gait, marked  
tremors or visual difficulties  
 Other visible, observable limitations (Describe  
in Observations (Section VIII))

If any apply, a  
description of the  
impairment and ob-  
servations are  
needed to supple-  
ment the medical  
reports.



VII. DUTIES AND JOBS (Name all the jobs held during the past year)

Police Academy for 3 mos from Aug to Oct. 1966  
Sitter for 1 mos

At various times Work as many hours as I want  
Subject to all of time at various times & when necessary

## C. VISION

Describe fully  
it is checked  
except "No"  
adverse working  
conditions"

## D. JOB DUTIES

Describe fully  
each of the  
duties performed  
by the claimant  
in a typical day,  
including the  
amount of super-  
vision received.

## E. REQUIRED SKILLS

Describe all  
"Yes" answers  
fully.

1. Training - other than on-the-job received  Yes  No

3. Supervision of  
others required  Yes  No

2. Special qualifications or skills required  Yes  No

Polic Academy for 3 mos from Aug to Oct. 1966  
Needed good health, physical coordination, Alert for crime.  
Has high school education

## VII. SENSATIONS

Sight  Yes  No  
Reading  Yes  No  
Responding  Yes  No

|              |                              |  |               |                              |  |
|--------------|------------------------------|--|---------------|------------------------------|--|
| Hearing      | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Comprehending | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Use of hands | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Breathing     | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| and arms     | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Sitting       | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Writing      | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Walking       | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Speaking     | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Other         | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Check each item  
to the left to  
indicate whether  
or not any diffi-  
culty was  
observed.

General appearance  
Behavior  
Outward attitude

Attitude  
of self-confidence  
of self-importance  
of self-respect

Describes fully  

- General appearance
- Behavior
- Outward attitude
- Circumstances surrounding the interview
- ALL ITEMS CHECKED "YES."

REPORT OF DISABILITY INTERVIEW  
(Write Legibly)

OFFICE

CONTACT MADE

- IN PERSON  
 TELEPHONE

DATE

PLACE OF CONTACT

- NO  CS  
 HOME  OTHER

ACCOUNT NUMBER

140-32-5420

CLAIMANT'S NAME

Douglas Berti Jr.

WAGE EARNER'S NAME (If not the claimant)

PERSON(S) CONTACTED  CLAIMANT  OTHER (If other, show address and relationship to a claimant.)

## NATURE OF INJURY OR ILLNESS

injured back

CURRENT AGE

37

HIGHEST GRADE COMPLETED

12

## JOB TITLE (Principal occupation)

Deliveryman

## TYPE OF BUSINESS OR INDUSTRY

Tire &amp; Wheel

## INTERVIEWER'S SIGNATURE

J. Curran

CR  PR OTHER

## I. ONSET OF IMPAIRMENT

a. DATE INJURY OR ILLNESS FIRST  
BOthered CLAIMANT

12/10/69

b. DATE CLAIMANT STOPPED  
WORKING

12/10/69

c. AOD

12/10/69

Describe effect  
of impairment on  
work when condi-  
n first bothered  
claimant.

- Symptoms
- Job duties
- Working con-  
ditions
- Attendance

Describe signi-  
ficant changes  
(with dates) until  
work stopped.

- Symptoms
- Job duties
- Working con-  
ditions
- Attendance

Give claimant's  
reasons for  
stopping work.Explain if AOD  
later than date  
claimant stopped  
work.

Has claimant worked since the alleged onset date? (If "Yes," complete Form OA-D821.)

 YES NOCHECK ANY OF THE FOLLOWING THAT APPLY (If any of the items are checked—Do Not Complete  
pages 2, 3, or 4.)If any apply, the  
decision will  
most likely rest  
on the medical  
reports or SGA.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Is engaging in SGA  | <input type="checkbox"/> Alleges progressive cancer                   | <input type="checkbox"/> Has lost a leg because of<br>diabetes or Buerger's disease |
| <input type="checkbox"/> Is hospitalized for:<br><input type="checkbox"/> a condition related<br>to the alleged disability | <input type="checkbox"/> Is unable to speak, or to<br>see, or to hear | <input type="checkbox"/> Has lost use of a leg because of a<br>fractured vertebrae  |
| <input type="checkbox"/> Loss of use of at least two limbs   |   |   |

EXHIBIT HIBIT

(If Additional Space is Needed, Use Form OA-C-5902.)

Is claimant confined to bed because of impairments, or  
disabled from work?  Yes  No **ED**

Has a physical impairment  
prevented pregnancy.

If yes, describe all changes in condition (if any) since work stopped.

### III. EFFECTS OF CURRENT CONDITION

Bedridden. Cannot get out of bed (either taken or helped).  
No pain or pain unrelievable.  
Cannot get out of bed. Cannot sit at home. Wears a  
corset & sleeps on bed-  
boards.  
Takes "Salvia" for  
pain and sometimes a  
sleeping pill.

Describe current condition  
 Symptoms—  
 Type, frequency,  
 severity  
 Normal Activity limitations  
 Other limitations

Physician placed limitations  
 Bed rest  
 Special therapy  
 Diet  
 Restricted activity  
 Etc.

### IV. DAILY ACTIVITIES

Rests at home during the day. Likes to lie, sit or  
have a nap.

Describe activities of a typical day  
 Physical  
 Mental  
 Contact with others

Describe assistance required in caring for personal needs.

Describe current living arrangements.

**CHECK ANY OF THE FOLLOWING THAT APPLY** (If any of the items are checked—Complete Observations (Section VII) and Omit Sections V and VI Only)

- Is house confined because of a physical impairment
- 3 months after stroke claimant has weakness of 2 limbs, or severe speech or memory defect with marked loss of use of one limb
- Arthritis with gross deformity of 2 or more limbs

- Parkinson's disease with marked tremors or propulsive gait.
- Multiple sclerosis with staggering gait, marked loss of visual difficulties
- Other severe, observable limitation (Describe)

If any apply, a description of the impairment and observations are needed to supplement the medical reports.

**56**

Social Security No.: 140-32-5420

DOCTORS' HOSPITAL OF STATEN ISLAND  
1050 Targee Street  
Staten Island, New York 10304

140-32-5420  
53

HOSP. NUMBER: 27571  
NAME: BUTURLA, DOUGLAS  
ATTENDING PHYSICIAN: Dr. Briggan

ADMITTED: 12/10/69  
DISCHARGED: 12/13/69

The patient was admitted to Doctors' Hospital following injuries sustained while seated next to the driver in an RMP car on 12/10/69 when it was struck by another car and driven into a parked vehicle. He apparently was thrown against the door on the right, injuring his lower back, right hip region and right lower ribs.

X-rays were taken and were negative for fracture. He was given medication for pain and put on complete bedrest. He was discharged for further follow up on 12/13/69, using a rubber foam strapping.

At present he is still complaining of pain in his lower back with radiation to both shoulders and aching in his right hip region.

Examination shows tenderness over the lumbosacral spine with restricted trunk movements. There were no neurological findings present. Pain on straight leg raising and tenderness over the lumbosacral area.

**FINAL DIAGNOSIS:** LIGAMENTOUS SPRAIN, DORSAL LUMBAR SPINE  
CONTUSION OF RIGHT LOWER RIBS

Dictated by:  
H. BRIGGIN, M.D.

HB/kb  
cc

Mailed by: Medical Record Department  
Doctors' Hospital of Staten Island

DATE DICTATED: 12/30/69  
DATE TYPED: 12/30/69

FINAL SUMMARY

EXHIBIT

II  
1

57

PROFESSIONAL QUALIFICATIONS

51

1. Physician's Name Briggin Henry  
(Last) (First) (Middle)

2. Address 25 Central Avenue, Staten Island, New York 10301

3. AMA Membership:  Yes  No

4. Year of Birth (B): 1904

5. Medical Education (ME): State: New York

School: New York Medical College

Year of Degree: 1931

6. Year of License (L): 1931

7. National Board (NB):  Yes  No

Year: \_\_\_\_\_

8. American Specialty Boards (AB): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Medical Specialties: Orthopedic Surgery  
\_\_\_\_\_  
\_\_\_\_\_

10. Type of Practice (TOP): Full-time

11. National Scientific Medical Societies: (SS) American College of Surgeons, International College  
of Surgeons  
\_\_\_\_\_

12. Professorial Appointments (PA): State: \_\_\_\_\_

School: \_\_\_\_\_

13. Other Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Sources of Information: American Medical Directory  
Edition: 25th Page: 2892

Other Sources: \_\_\_\_\_

EXHIBIT

12

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATIONForm Approved.  
Budget Bureau No. 73-R510.7MEDICAL REPORT  
(General)DATE OF THIS  
REQUEST

4/17/70

## Notice to Physician:

Please include sufficient details of history, physical and diagnostic findings, clinical course, therapy and response to enable a reviewing physician to make an independent determination as to the severity and duration of the impairment.

|  |   |  |   |
|--|---|--|---|
| (1)<br>IDENTIFYING<br>INFORMATION<br>(To be<br>completed by<br>Requesting<br>Office) | PATIENT'S NAME<br><i>Rudolf Buturka</i> | DATE OF BIRTH<br><i>3/3/43</i>   | SOCIAL SECURITY ACCOUNT NO.<br><i>140-32-5428</i> |
|  | NAME OF DOCTOR<br><i>Dr. Brigger</i>    | ADDRESS OF REQUESTING OFFICE<br><i>50 FOREST AVENUE<br/>STATEN ISLAND, N.Y. 10310<br/>TEL 447-7734</i> | 55  |

## I. HISTORY: (Give complaints, past and present, clinical course, including therapy and response.)

On 2-9-70, the patient complained of severe pain in his mid and low back and radiated up to between the shoulder blades. He was wearing a lumbosacral support without much relief. There was still restriction of trunk movements, raising and tenderness over the lumbosacral spine. The patient was continued on physiotherapy treatments and the lumbosacral support.

On 2-9-70, the patient complained of considerable pain over the lumbosacral area and right lower ribs and lumbar region present for the past week. The pain was aggravated on trunk movements with restriction and limitation present. There was also pain on straight leg raising on the right with restricted motion present. No neurological findings were present. The patient was continued on physiotherapy treatments and exercises.

On 3-9-70, the patient was somewhat improved with physiotherapy treatment. He still complained of residual pain in his lower back with radiation down the left lower extremity. There was still pain on straight leg raising but less restriction at that time. No neurological findings were present. The patient was continued on physiotherapy treatments and exercises.

DIAGNOSIS: Ligamentous sprain of the dorsolumbar spine and contusion to right lower ribs.

PROGNOSIS: Still guarded as to any permanent disability.

The patient still remains under observation. He is still unable to return to regular duty.

| DATE OF INJURY OR<br>FIRST SIGNS OF ILLNESS | DATE IMPAIRMENT PRE-<br>VENTED WORK | DATE YOU FIRST<br>EXAMINED PATIENT | FREQUENCY OF VISITS | DATE OF LAST EXAMINA-<br>TION |
|---|-------------------------------------|------------------------------------|---------------------|-------------------------------|
| 12/10/69                                    | 12/10/69                            | 12/10/69                           | bi monthly          | 4/28/70                       |

Form SSA-826 17-671

EXHIBIT 13 (3 pages)

## II. PHYSICAL FINDINGS: Please show all pertinent findings (with dates).

| HEIGHT | WEIGHT |
|--------|--------|
|        |        |

-55-

The above patient was admitted to Doctors' Hospital on 12-10-69 following injuries sustained while seated next to the driver in a radio motor patrol car when it was struck by another car and driven into a parked vehicle. He apparently was thrown against the door on the right injuring his lower back, right hip region and right lower ribs.

X-rays taken were negative for fracture. The patient was treated with medication for pain and put on complete bedrest. A rubber foam strapping was applied and the patient was discharged from the hospital on 12-13-69.

On examination in my office of 12-22-69, he still complained of pain in his lower back with radiation up to both shoulders. He was unable to sit for any length of time and complained of aching in his right hip region. There was still restriction of trunk movements, tenderness over the lumbosacral spine and right sacroiliac area with restriction of straight leg raising and the complaint of pain in his lower back. There was some tenderness also over the lower ribs on the right. The patient was started on physiotherapy treatments.

On 1-3-70, the patient still complained of severe pain, at times, in his lower back especially after sitting or bending. At times he was unable to get comfortable with a feeling of a "big knot" in his lower back with radiation up to the shoulder blades. There was still restriction of trunk movements and tenderness over the lumbosacral spine in the right costal area. There was pain on straight leg raising but no neurological findings were present. He was continued on physiotherapy treatments and advised a lumbosacral support.

## 60

III. LABORATORY AND SPECIAL STUDIES: Give results with dates. (Hemoglobin, Hematocrit, Sedimentation rate, Cerebrospinal fluid, Blood chemistry, Urinalysis, Sputa (smear, culture), Serology, X-rays, Electrocardiogram, Liver function, Bronchoscopy, Myelogram, Biopsy, Pulmonary function, Renal function, Psychometric, etc.)

57

4/6/70 - Examination: Still restricted trunk movements. Pain on straight leg raising and also on flexion of neck with tenderness over the right lumbar region and along the anterior superior iliac crest.

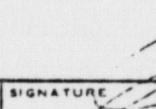
Physiotherapy to be discontinued temporarily. The patient should continue with warm baths and exercises. Advise a neurological consultation.

Unable to return to regular duty as yet.

4/28/70 To resume physiotherapy. Still awaiting neurological consultation.

## IV. DIAGNOSES:

1. Ligamentous sprain of the dorsolumbar spine
2. Contusion to right lower ribs.
- 3.

|  |  |  |                 |
|--|--|--|-----------------|
| REPORTING PHYSICIAN'S NAME AND ADDRESS<br>Henry Briggin, M. D.<br>25 Central Avenue<br>Staten Island, N.Y. 10301 |  | SIGNATURE<br> | TITLE<br>M. D.  |
|  |  | TELEPHONE NUMBER<br>G1-73386   | DATE<br>4/28/70 |

U. S. GOVERNMENT PRINTING OFFICE 1967 O - 272-610

Jan 2-4

61

SS #76



POLICE DEPARTMENT

NEW YORK, N.Y. 10013

ES

Medical Unit  
235 E. 20th St.  
New York City, N.Y. 10003

May 4, 1970

Department of Health, Education & Welfare  
Social Security Administration  
District Office  
Staten Island, New York 10310

Re: Ptl. Douglas J. Buturla  
Shield #17150 May 2  
Sgt 140-32-5420

Gentlemen:

With reference to your request for medical record of Ptl. Douglas J. Buturla and his authorization for release of these records, we are forwarding the following information.

Patrolman Buturla was injured in the line of duty on December 10, 1969, when he was involved in an automobile accident. Diagnosis: Low Back Sprain & Contusion of Right lower Ribs.

As a result of the above injury, Patrolman Buturla has been on continuous sick report from December 10, 1969 to present date.

For your information, copy of Honorary Police Surgeons report is enclosed.

Very truly yours,

*Stephen McCoy*  
Stephen M. McCoy, M.D.  
Chief Surgeon

fm  
encl

THIS IS A PRIVILEGED AND CONFIDENTIAL  
COMMUNICATION AND CONTENTS ARE NOT TO  
BE DIVULGED TO ANYONE.

EXHIBIT *M*

62

Entry 761

NYC POLICE DEPARTMENT  
MEDICAL UNIT

140-32-5420

HONORARY POLICE SURGEON'S REPORT

Copy to

DUPLICATE MAILED TO DISTRICT SURGEON

SAVINO

59

ON 4/17/70

Ptl. Douglas J. Buturla  
Rank Name

17150 May 2  
Shield Command

REFERRED TO DR. Henry Briggan

Date \_\_\_\_\_

Date of Appt 4-6-70

DIAGNOSIS

Ligamentous sprain of the dorsolumbar spine, contusion to right lower ribs.

TREATMENT  
OR  
OPERATION

For the past week, complaining of severe pain in right posterior hip region but no radiation down the lower extremity. Pain aggravated on trunk movements. At times, pain is localized over the right lumbar region.

RECOMMENDATIONS

EXAMINATION: Still restricted trunk movements. Pain on straight leg raising and also on flexion of neck with tenderness over the right lumbar region and along the anterior superior iliac crest.

PROGNOSIS

Physiotherapy to be discontinued temporarily. The patient should continue with warm baths and exercises. Advise a neurological consultation.  
Unable to return to regular duty as yet.

APPROVED AND SUBMITTED  
Sgt. [Signature]  
[Signature]

Signed [Signature]

## 63

## PROFESSIONAL QUALIFICATIONS

1. Physician's Name McCoy  
 (Last) Stephen  
 (First) Murray  
 (Middle)

2. Address 554 Arlyle Road, Brooklyn, New York 11230

3. AMA Membership:  Yes  No

4. Year of Birth (B): 1913

5. Medical Education (ME): State: New York

School: Columbia University College of Physicians and Surgeons

Year of Degree: 1937

6. Year of License (L): 1937

7. National Board (NB):  Yes  No

Year: \_\_\_\_\_

8. American Specialty Boards (AB): American Board of Surgery

9. Medical Specialties: General Surgery, Plastic Surgery

10. Type of Practice (TOP): Full-time

11. National Scientific Medical Societies: (SS) American College of Surgeons, American Society of Abdominal Surgeons, Society of Medical Consultants to the Armed Forces

12. Professorial Appointments (PA): State: New York

School: State University of New York Downstate Medical Center

13. Other Information: \_\_\_\_\_

14. Sources of Information: American Medical Directory  
Edition: 25th Page: 574, 2654

Other Sources: \_\_\_\_\_

Form HA-526 (11-67)

EXHIBIT 15

64

**REPORT OF CONTACT**  
(USE INK OR TYPEWRITER)

|   |                             |
|---|-----------------------------|
| REVIEWING OFFICE                            | ACCOUNT NUMBER (and symbol) |
| TO: NY P BIR CH SF DBS KC DFC SA            | 140-32-5420 C               |
| NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON |                             |
| Douglas Buturla                             |                             |

PERSON(S) CONTACTED AND ADDRESS(ES):  WE OR SE  OTHER PERSON (Specify)  
 Receptionist, Dr. Henry Brigg's Office

CONTACT MADE:  DO  BO  CS  HOME  PHONE:  OTHER (Specify) DATE OF CONTACT  
 5/13/70

SUBJECT: OUT: GI7-3388

PURPOSE: To ascertain whether or not claimant has had a neurological consultation or is scheduled for one.

FACTS: I was advised that claimant's records do not show that he was seen by a neurologist and in all probability the Police Department, Medical Unit would send claimant to a neurologist. The records show that when last seen, claimant still had restricted trunk movements, pain on straight leg raising and along the anterior superior iliac crest.

NEXT ACTION: Contact Medical Unit Police Department.

DO NOT WRITE IN MARGIN

|                 |   |                |
|-----------------|---|----------------|
| E. Glenn        |   | DATE OF REPORT |
| SIGNATURE       | E. Glenn  |                |
| DISTRICT OFFICE | <input type="checkbox"/> CR <input type="checkbox"/> FR <input type="checkbox"/> SR <input type="checkbox"/> CLAIMS CLERICAL<br><input checked="" type="checkbox"/> OTHER (Specify) Disability Examiner | PAGE 1 of 1    |

FORM SSA-5002 (2-68)

#5 838 D5/13 5/15 EG:enk 2

EXHIBIT

OPB-1960-66-10-80333-1 329-023

16

65

May 22, 1970

NYC POLICE DEPARTMENT  
MEDICAL UNIT

60

HONORARY POLICE SURGEON'S REPORT

DUPPLICATE MAILED TO DISTRICT SURGEON Savino /Am. Flynn.  
ON 6/5/70

Ptl. Douglas Buturla 17150 May #2  
Rank Name Shield Command

REFERRED TO DR. Thomas W. Garvey Date May 22, 1970

Date of Appt May 26, 1970 at 10:00 AM

DIAGNOSIS Traumatic luxation of the left knee. Patellofemoral  
Tendon Rupture Rt Ant. Tendon.

TREATMENT  
OR  
OPERATION

RECOMMENDATIONS Conservative treat

PROGNOSIS

Y  
Guarded  
If Dr. Carlson does his clean up  
in another month should  
be hopeful for re-operation

161

Thomas W. Garvey, M.D.  
Signature

EXHIBIT 17

## PROFESSIONAL QUALIFICATIONS

€3

1. Physician's Name Garvey Thomas Quincy, Jr.  
 (Last) (First) (Middle)

2. Address 115 East 61st Street, New York, New York 10021

3. AMA Membership:  Yes  No

4. Year of Birth (B): 1902

5. Medical Education (ME): State: New York

School: New York University School of Medicine

Year of Degree: 1927

6. Year of License (L): 1927

7. National Board (NB):  Yes  No

Year: \_\_\_\_\_

8. American Specialty Boards (AB): American Board of Otolaryngology

9. Medical Specialties: Neurological Surgery

10. Type of Practice (TOP): Full-time

11. National Scientific Medical Societies: (SS) International College of Surgeons, American College of Surgeons, American Academy of Neurology

12. Professorial Appointments (PA): State: New York  
 School: New York University School of Medicine

13. Other Information: \_\_\_\_\_

14. Sources of Information: American Medical Directory  
Edition: 25th Page: 2791

Other Sources: \_\_\_\_\_

EXHIBIT 18

67

Entry 1774

NYC POLICE DEPARTMENT  
MEDICAL UNIT

HONORARY POLICE SURGEON'S REPORT

DUPLICATE MAILED TO DISTRICT SURGEON SAVING DISTRICT E-1  
ON \_\_\_\_\_

Ptl. Douglas J. Buturla 17150 May 2  
Rank Name Shield Command

REFERRED TO DR. Henry Brigin Date \_\_\_\_\_

Date of Appt. 6-9-70

DIAGNOSIS Ligamentous sprain of the dorsolumbar spine, contusion to right lower ribs

TREATMENT The patient still complains of pain in his lower back and right hip region  
OR with occasional radiation down the anterior right thigh.

OPERATION

EXAMINATION: Stands erect with restriction of trunk movements, flexion, extension and lateral bending. Tenderness over the lower lumbar spine on the right. Pain on straight leg raising. No definite neurological findings though complains of some tenderness along the anterior thigh on the right.

RECOMMENDATIONS

Inasmuch as symptoms still persist, would advise further hospitalization in the form of pelvic traction and complete bedrest.

Please send authorization

6-18-70  
Authorizd.

SJ

  
EXHIBIT  
Signature 19-11-

DOCTORS' HOSPITAL OF STATEN ISLAND  
1050 Targee Street  
Staten Island, New York 10304

OSP. NUMBER: 30284  
NAME: BUTURLA, DOUGLAS  
ATTENDING PHYSICIAN: Dr. Briggan

ADMITTED: 6/19/70  
DISCHARGED: 7/10/70

Patient was admitted to Doctors' Hospital on 12/10/69 following injury sustained on the same day. When seated next to driver in a radio patrol car, struck by another car and driven into a parked vehicle. He was apparently thrown against the door on the right, injuring his back, right hip region and the right ribs. X-rays were negative for fractures. He was treated for pain with medication and complete bedrest. Rubber foam strapping was applied and he was discharged from hospital on 12/13/69 for further follow up at office.

At that time he still complained of pain in the lower back with radiation to both shoulders, unable to sit for any length of time, aching in right hip region. There was still restriction of trunk movements, tenderness over the lumbar sacral spine, right sacroiliac region with restriction on straight leg raising and complaint of pain in the lower back, tenderness over the lower ribs. Patient was started on physio therapy and was seen regularly at my office. He was receiving physio therapy treatments 3 times a week. In view of the patient's complaints still continuing, he was admitted to Doctors' Hospital for further treatment.

Examination at the time showed restricted trunk movements, tenderness of lower back, pain on straight leg raising with restriction. No definite neurological findings.

He has been receiving physio therapy, pelvic traction and heat massage. He had EMG studies which reported negative. He had a consultation with Dr. Leventhal. He was discharged somewhat improved on 7/10/70 for further follow up at office.

FINAL DIAGNOSIS: LIGAMENTOUS SPRAIN, DORSOLUMBAR SPINE WITH RESIDUAL SYMPTOMS STILL PRESENT

HB/kb  
cc

  
H. BRIGGAN, M.D.

DATE DICTATED: 7/15/70  
DATE TYPED: 7/15/70

EXHIBIT 20  
FINAL SUMMARY

69

1405

HONORABLE

DUPLICATE

SAVINO

66

Pt1. Douglas J. Buturla  
Rank: 1st Lt.

17150 May 2  
Field Command

REFERRED TO:

Henry Briggan

DATE OF REPORT: 7-14-70

DIAGNOSIS

Ligamentous sprain of the dorsolumbar spine. contusion to right lower ribs

TREATMENT OR OPERATIONS  
The patient was admitted to Doctors' Hospital on 6-19-70 and discharged on 7-10-70. He received complete bedrest, medication, physiotherapy, pelvic traction, EMC studies which were reported as negative and a neurosurgical consultation with Dr. H. R. Leventhal.

PROGNOSIS  
PECOMPT: The pain still persists in his lower back with radiation down both lower extremities especially on the right, aggravated on coughing and trunk movements. Unable to stand erect with restricted trunk movements. No definite neurological findings present. Pain on straight leg raising.

To have pelvic traction at home. Will probably require a myelogram later.

  
EXHIBIT  
~1

70

(8/14) S.S. #127



POLICE DEPARTMENT  
NEW YORK, N.Y. 10013

Medical Unit  
235 E. 20th Street  
New York City, N.Y. 10003

78 RUE 14 AUG 12  
BUREAU OF DISABILITY DETERMINATIONS  
DISABILITY DETERMINATIONS

August 14, 1970

C7

Bureau of Disability Determinations  
110 William Street  
New York, N.Y. 10038

Re: Ptl. Douglas J. Buturla  
Shield 17150 Mcy #2  
S.S. No. 140-32-5420

Gentlemen:

With reference to your request of July 17, 1970 for additional information concerning Patrolman Douglas Buturla we are forwarding the following.

Patrolman Buturla was examined by Honorary Police Consultant Dr. Henry Briggan on June 9, 1970 and July 14, 1970. He was also examined by Honorary Neurologist Dr. Thomas Q. Garvey on May 26, 1970. For your information, copies of their latest reports are enclosed.

It is indicated at this time that further treatment is necessary and his failure to respond makes it difficult to predict when he can return to work.

Very truly yours,

Stephen M. McCoy, M.D.  
Chief Surgeon  
*Stephen M. McCoy*  
*Aug 14 1970*

fm

EXHIBIT 22

MEDICAL REPORT  
(General)DATE OF THIS  
REQUEST

9/28/70

€3

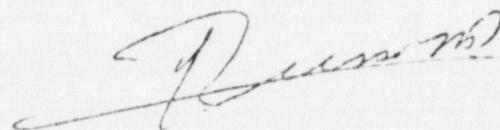
## Notice to Physician:

Please include sufficient details of history, physical and diagnostic findings, clinical course, therapy and response to enable a reviewing physician to make an independent determination as to the severity and duration of the impairment.

|  |   |   |  |
|--|---|---|--|
| (1) IDENTIFYING INFORMATION<br><i>(To be completed by Requesting Office)</i> | PATIENT'S NAME<br><i>Douglas Butterfield</i><br>NAME (FAMILY NAME, IF different from patient) | DATE OF BIRTH<br><i>3/3/43</i>  | SOCIAL SECURITY ACCOUNT<br><i>140 325480</i><br>ADDRESS OF REQUESTING OFFICE |
|  | NAME OF DOCTOR<br><i>Dr. Russo</i>  | <b>SOCIAL SECURITY ADMINISTRATION</b><br><b>595 FOREST AVENUE</b><br><b>STATEN ISLAND, N.Y. 10310</b> |  |

I. HISTORY: (Give complaints, past and present, clinical course, including therapy and response.)

Patient is being treated by me  
for Essential Hypertension and not related  
to his disability.



| DATE OF INJURY OR FIRST SIGNS OF ILLNESS | DATE HOSPITALIZED OR ENTERED WORK | DATE YOU FIRST EXAMINED PATIENT | FREQUENCY OF VISITS | DATE OF LAST EXAMINATION |
|--|-----------------------------------|---------------------------------|---------------------|--------------------------|
|  |                                   |                                 |                     |                          |

BUTURLA, PTL. DOUGLAS  
422 Cromwell Avenue  
Staten Island, N.Y. 10305  
Tel: 979-0213  
Age: 27  
Occ: Ptl.

Ref: Dr. Dominick Savino  
12th District Surgeon  
Copy to: Henry Briggins  
Joint of the M.D. Investigation & Research  
Bureau of Inspection and Appliance  
Shield #17150  
May #2 FEB 2 1971

10-26-70 The patient gives a history of injury on 12/10/69 when the patrol car he was in was in an accident with another car. He didn't hit his head and was not unconscious. He had immediate pain in the lumbo-sacral spine and was taken to Doctors Hospital where he remained from the date of injury to the 13th. He was examined and x-rays were taken. He then had physical therapy 3 times a week for about 6 months when he was returned to Doctors Hospital and was there from June 19th to July 10th. He had pelvic traction in bed and also heavy traction and physical therapy. He was not improved.

He then got portable traction which he has used at home. He still has pain, however.

Past history: Otherwise entirely negative.

Complaints: Lumbar and lumbosacral pain radiating to the postero-lateral aspect of the right lower extremity to the upper calf. Pain is increased by cough.

X-rays dated 2/23/69, #26319, PDNY, showing the lumbosacral spine, negative.

X-rays dated 5/4/70, #28646, PDNY, showing the lumbosacral spine and sacroiliac joints, and the right hip joint, negative.

X-rays dated 10/7/70, #31368, PDNY, showing the lumbosacral spine and sacroiliac joints, show slight narrowing, lumbar 4 disc interspace.

On complete orthopedic examination he shows:

- ++ restriction, lumbosacral motion.
- ++ protection.
- ++ Lasegue, right.
- ++ lumbosacral pain on forced head-flexion.

All other findings are negative.

Diagnosis: Lacerated lumbar 4 disc, with only slight degenerative changes.

Treatment: Continue lumbosacral belt support. Do warm baths at home before bedtime to relax him, use of a firm bed support and occasional observation. Would stop intensive treatment as magnifying situation.

Suggest continuing under Dr. Briggins's observation.

*EXHIBIT A*

73

BUTURLA, PTL. DOUGLASS

70

10/26/70 continued -

If he would accept, and could be returned to Limited Duty, I believe this would be of value.

Suggest re-evaluation in 3 months, or before if any change. At that time he should have a new primary lumbosacral series of x-rays plus obliques, including lateral views in front and back bends. DMB

1-18-71 Interval history negative. Pain has continued. He had returned to restricted duty, but had another attack of pain and is out on sick report now.

On review examination shows:

- +++ restriction, lumbosacral motion.
- +++ protection.
- +++ Lasegue on the right.
- + Lasegue left.
- + weakness dorsiflexion right hallux.
- ++ decrease sensation, lumbar 5 nerve root level downwards on the right.

X-rays dated 1-12-71, #32867, PDNY, showing the lumbosacral spine, primary plus obliques, show slightly greater narrowing at lumbar 4 interspace and slightly more immobilization there than last x-rays of October 1970.

Diagnosis: Lacerated lumbar 4 disc.

Advice: With the continued disability and increased findings, would advise exploration lumbar 4 on the right and right midline and fusion lumbar 4 to sacrum with a distraction graft.

Patient to consider matter and the Department to consider same and if they wish it done, will be glad to furnish him with the above surgical repair.

Question of pseudoarthrosis discussed and described to the patient.

Disability status: Disabled for Police Duty.

If he calls in less than a month he can be scheduled. DMB

*D. Brown, M.D.*

74

## PROFESSIONAL QUALIFICATIONS

1. Physician's Name Bosnerth David March  
 (Last) (First) (Middle)

2. Address 742 Park Avenue, New York, New York 10021

3. AMA Membership:  Yes  No

4. Year of Birth (B): 1897

5. Medical Education (ME): State: Vermont

School: University of Vermont College of Medicine

Year of Degree: 1921

6. Year of License (L): 1925

7. National Board (NB):  Yes  No

Year: 1925

8. American Specialty Boards (AB): American Board of Orthopaedic Surgery

9. Medical Specialties: Orthopedic Surgery

10. Type of Practice (TOP): Full-time

11. National Scientific Medical Societies (SS): American Academy of Orthopaedic Surgeons,  
American College of Surgeons, American Orthopaedic Association

12. Professorial Appointments (PA): State: New York

School: New York Medical College

13. Other Information:

14. Sources of Information: American Medical Directory  
Edition: 25th Page: 2772

Other Sources:

Form HA-526 (11-67)

EXHIBIT 25

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

MEDICAL REPORT  
(General)

Form Approved  
Budget Bureau No. 12-8510-7  
DATE OF THIS  
REQUEST

**Notice to Physician:**

Please include sufficient details of history, physical and diagnostic findings, clinical course, therapy and response to enable a reviewing physician to make an independent determination as to the severity and duration of the impairment.

|  |  |  |   |
|--|--|--|---|
| (1)<br>IDENTIFYING<br>INFORMATION<br>(To be<br>completed by<br>Requesting<br>Office) | PATIENT'S NAME<br><b>DOUGLAS BUTCLA</b>                | DATE OF BIRTH<br><b>3/31/43</b>  | SOCIAL SECURITY ACCOUNT NO.<br><b>140-32-5420</b> |
|  | NAME OF EARNER'S NAME (if different from patient)<br>— | ADDRESS OF REQUESTING OFFICE<br><b>DR. DAVID M BOSWORTH, MD<br/>503 PARK AVENUE<br/>NEW YORK CITY NY 10010</b> |   |
| NAME OF DOCTOR   |  |  |   |

I. HISTORY: (Give complaints, past and present, clinical course, including therapy and response.)

This patient was first seen here on 10-26-70, with an injury to his back, on 12-10-69, sustaining a lacerated lumbar 4 disc.

Enclosed is a copy of his record of his visits here on 10-26-70 and 1-18-71.

Department of Health, Education & Welfare  
Social Security Administration

FEB 2 1971

| DATE OF INJURY OR<br>FIRST SIGNS OF ILLNESS | DATE IMPAIRMENT PRE-<br>VENTED WORK<br>Seen in consultation | DATE YOU FIRST<br>EXAMINED PATIENT<br>10-26-70 | FREQUENCY OF VISITS | DATE OF LAST EXAMINA-<br>TION<br>1-18-71 |
|---|---|--|---------------------|--|
| 12-10-69                                    |   |  |                     |  |

FORM SSA-826 (1-67)

EXHIBIT 2 (2 pages)

III. LABORATORY AND SPECIAL STUDIES. Give results with dates. (Hemoglobin, Hematocrit, Sedimentation rate, Cerebrospinal fluid, Blood chemistry, Urinalysis, Sputa (smear, culture), Serology, X-rays, Electrocardiogram, Liver function, Bronchoscopy, Myelogram, Biopsy, Pulmonary function, Renal function, Psychometric, etc.)

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## IV. DIAGNOSES:

1. Lacerated lumbar 4 disc
- 2.
- 3.



REPORT OF  
DAVID KATZMAN, M.D.  
742 PARK AVENUE  
NEW YORK, N.Y. 10021

|                                    |                      |
|------------------------------------|----------------------|
| SIGNATURE: <i>David Katzman</i>    | TITLE: <i>M.D.</i>   |
| TELEPHONE NUMBER: <i>Re 4-7477</i> | DATE: <i>1-26-71</i> |

77

## SUMMONS

**United States District Court**

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

MISS J. EKOLA,

PLATE I

SEMINARS

112-1713 - 1-1082-1

**Defendant:**

the above-named Defendant.

for me thereby summoned and required to serve upon

LAWRENCE BERKELEY

attorney, whose address

949 Elton Avenue  
Evanston, Ill. 60213

4. Answer to the complaint which is herewith served upon you, within **60** days after service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

*Clerk at Court*

*Deputy Clerk*

New York, New York  
August 10, 1941

[Seal of Court]

## COMPLAINT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

DOUGLAS J. BUTURLA,

Plaintiff,

-against-

SECRETARY OF HEALTH, EDUCATION  
AND WELFARE,

Defendant.

-----x

Claimant, by his attorney MORTON M. BERGER, com-  
plaining of the defendant, states, upon information and  
belief, as follows:

1. At all times hereinafter mentioned,  
plaintiff was and still is a resident of 97 Rockland  
Avenue, Staten Island, New York.
2. That at all times hereinafter mentioned,  
the defendant SECRETARY OF HEALTH, EDUCATION AND WELFARE  
is made a defendant pursuant to Section 205(g) of the Social  
Security Act, as amended (Section 4056); Sections 216i;  
223, 223i; 223(d)(1); 223(d)(2)(A); 202(e); 202(f);  
1869(b); Title 42 United States Code; Section 404; ]502  
of the Social Security Administration Regulations No.4  
(20 Code of Federal Regulations, Section 404.]502)  
(Section 404.]507).
3. That on April 14, 1970, the plaintiff  
duly applied for Social Security Benefits pursuant to  
the aforesaid Sections of the Social Security Act.

4. Said application was denied on September 22, 1970.

5. The plaintiff duly requested reconsideration on October 5, 1970, and the said application for reconsideration was denied on November 6, 1970.

6. That the plaintiff requested a hearing before the Bureau of Hearings and Appeals.

7. That on June 2, 1971, WILLIAM V. McNEMAR, JR., Hearing Examiner, rendered his decision on the application for reconsideration, denying the plaintiff benefits for disability insurance.

8. On June 29, 1971, the Appeals Council of the Bureau of Hearings affirmed the decision of the Hearing Examiner of June 2, 1971.

9. The plaintiff in his application for benefits met the requirements of the Act in that he established his inability to engage in substantial gainful activity.

10. That the plaintiff's physical disability has been documented by his physicians wherein it was medically shown that plaintiff was totally and partially incapacitated from his duties as a New York City policeman.

11. That as a result of the medical reports relied upon by defendant, the Police Department of the City of New York has officially accepted plaintiff's physical incapacity from full time and part time police work from December 10, 1969, to date.

12. That defendant has self-servingly culled the medical reports and interpreted them to mean that plaintiff is not totally and partially disabled

13. That the conclusions are not in good faith, made by lay persons, and constitute hearsay and strained and

incrudulous and frivolous speculations, unsupported and without having had a physical examination of the plaintiff by one of the doctors of the Social Security panel.

14. The orders, opinions, findings and decisions heretofore made and entered are not in accordance with the law and are contrary to Section 216(i) and Section 223, respectively, of the Social Security Act, as amended, of Title 420 of the United States Code, since they fail to give plaintiff the benefit of said Act in that plaintiff has substantially established to the satisfaction of the Department of Social Services, Bureau of Disability Determinations of the State of New York, the issue of his physical disability.

15. It is now necessary for this Court to have possession of all the notes, papers, exhibits, orders, decisions, findings, opinions and all other relevant papers now in the possession of the defendant to determine the correctness of the opinions and decisions of the defendant in accordance with the law, and whether the same are justified and supported by substantial medical evidence.

16. Plaintiff herein seeks a review of the previous orders, decisions, opinions and findings, denying his application for benefits under Section 216 (i) and Section 223, as amended, of Title 42 of the United States Code.

17. The plaintiff has no adequate remedy at law and no means of redress of the wrong of which he complains and of the injustices done by said findings of fact, orders, decisions and opinions.

WHEREFORE, plaintiff respectfully prays:

1. That process of this Court duly issue, directing defendant to deliver to this Court or the Clerk thereof a certified transcript of the plaintiff's claim for benefits under Section 216(i) and Section 223, as amended, of Title 42 of the United States Code, and defendant's answer thereto, within 20 days from receipt hereof, a transcript of the testimony adduced before WILLIAM V. McNEMAR, JR., defendant's Hearing Examiner, the orders made and entered, together with the findings of fact and opinions, the exhibits, all offered into evidence upon any hearing or conference, and any other paper relevant to and connected with any formal or informal hearing conducted therein, all of which are contained in his office and may be filed under Account No. 140-32-5420.

2. That the decision of the Appeals Council, dated June 2, 1971, and the orders, decisions and opinions and findings of fact previous and subsequent thereto be modified directing defendant to find that the plaintiff qualifies for benefits under Section 216(i) and Section 223, as amended, of Title 42 of the United States Code, with interest from December 10, 1969, together with reasonable attorneys' fees and the costs and disbursements of this action; and

3. For such other, further and different relief as this Court may deem just and proper in the premises.

MORTON M. BERGER  
Attorney for Plaintiff  
\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Douglas J. BUTURIA,

Plaintiff,

-against-

SECRETARY OF HEALTH, EDUCATION  
AND WELFARE,

Answer

CIVIL ACTION  
No. 71 C 1061

Defendant.

Defendant Secretary of Health, Education and Welfare, by his attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, and being the complaint of the plaintiff, DOUGLAS J. BUTURIA, hereby incorporates by reference and files herewith as part of this answer pursuant to §205(g) of the Social Security Act, as amended (42 U.S.C. §405(g)), a certified copy of the transcript of the administrative record including the evidence upon which the findings and decision complained of are based, in which defendant refers for all relevant proceedings, evidence, findings and decisions herein, and on information and belief respectfully alleges that:

FIRST: Defendant admits the allegations contained in paragraphs 3, 4, 5, 6, 7, 8 and 16 of plaintiff's complaint.

SECOND: With respect to the allegations contained in paragraph 2 of plaintiff's complaint, defendant states that the court has jurisdiction over the subject matter of this action exclusively pursuant to section 205(g) of the Social Security Act (42 U.S.C. §405(g)).

THIRD: Defendant denies the allegations contained in paragraphs 9, 10, 13, 14, and 17.

FOURTH: Defendant denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 1 of the complaint.

FIFTH: Answering the allegations contained in paragraphs 10 and 11 specifically and the complaint generally, defendant denies that the plaintiff is entitled to disability insurance benefits, states that the decision of the agency is correct and in accord with applicable law and regulation, and, further, defendant states that the facts and issues in this matter are fully set forth in the administrative transcript, a copy of which is attached hereto as Exhibit 1 of the answer herein.

SIXTH: With respect to the allegations contained in paragraph 15, defendant states, pursuant to section 205(g) of the Social Security Act, 42 U.S.C. 405(g), that as part of his answer a certified copy of the transcript of the administrative record is annexed hereto.

SEVENTH: With respect to plaintiff's request for interest, defendant states that 28 U.S.C. 2411(e) provides for payment by the United States of interest only when so provided by Act of Congress. Congress has made no such provision for such payment in claims arising under Title II of the Social Security Act.

EIGHTH: With respect to plaintiff's request that an attorney's fee be awarded by the court, defendant states that this court, pursuant to section 206(b) of the Act, 42 U.S.C. 406(b), may award a reasonable fee, not in excess of 25 percent of total past due benefits, such fee to be paid from such past due benefits, where the court renders a judgment favorable to the plaintiff.

AS AND FOR A THIRD SEPARATE AND  
COMPLETE ALTERNATIVE DEFENSE

THIRTY: Defendant states that this Court has no jurisdiction to grant plaintiff any relief except that provided by §205(i) of the Social Security Act, 42 U.S.C. §405(i), namely, to review the "final decision of the Secretary," and "to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing."

AS AND FOR A FOURTH SEPARATE AND  
COMPLETE ALTERNATIVE DEFENSE

FOURTY: Defendant states the findings of fact and conclusion of the defendant are supported by substantial evidence and are, therefore, conclusive, as is shown by the transcript of the record upon which the decision complained of was made.

WHEREFORE, defendant respectfully requests judgment dismissing the complaint with costs and disbursements, and for judgment in accordance with §205(i) of the Social Security Act, as amended, 42 U.S.C. §405(i), affirming the decision complained of.

Dated: Brooklyn, New York  
December 1, 1971

ROBERT A. MORSE  
United States Attorney  
Eastern District of New York  
Attorney for Defendant  
200 Cadman Plaza East  
Brooklyn, New York 11201

BY:

Mary T. Edwards  
Assistant U. S. Attorney

TO: Morton H. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

F#712977

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
DOUGLAS J. BUTURLA, :  
Plaintiff, :  
- against - : Civil Action  
SECRETARY OF HEALTH, : No. 71 C 1061  
EDUCATION AND WELFARE, :  
Defendant. :  
-----x

SUPPLEMENTAL RECORD OF  
ADMINISTRATIVE PROCEEDINGS

EDWARD JOHN BOYD V  
United States Attorney  
Eastern District of New York  
Attorney for Defendant  
225 Cadman Plaza East  
Brooklyn, New York 11201

Douglas Buturla, Claimant and Wage Earner

A/N, 140-32-5420

SUPPLEMENTAL COURT TRANSCRIPT INDEX

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Douglas Buturla

(Claimant)

140-32-5420

(Social Security Number)

(Wage Earner) (Leave blank if same as above)

EXHIBITSEXHIBIT  
NO.

DESCRIPTION

Court  
Transcript  
Page No.

NO. OF PAGES

ADMITTED AT SUPPLEMENTAL HEARING:

|    |   |   |         |
|----|---|---|---------|
| 27 | Medical reports by Henry Briggin, M.D., of examinations done on 1-11-71, 6-7-71, 10-14-71 and 4-10-72 as well as a letter dated 4-13-72 | 5 | 253-257 |
| 28 | Medical reports by David M. Bosworth, M.D., of examinations done on 5-11-72 and 5-16-72 with x-ray reports attached                     | 4 | 258-261 |
| 29 | Letter from New York City Police Department, dated 5-1-73   | 1 | 262     |
| 30 | Medical report by Herman I. Frank, M.D., dated 8-28-73  | 2 | 263-264 |
| 31 | Professional qualifications, Herman I. Frank, M.D.  | 1 | 265     |
| 32 | Medical report by Henry Briggin, M.D., dated 6-18-73  | 1 | 266     |
| 33 | Letter from administrative law judge to Dr. Sidney Fishman, dated 9-14-73   | 2 | 267-268 |
| 34 | Resume of background and experience of Dr. Sidney Fishman   | 6 | 269-274 |
| 35 | Letter from administrative law judge to Dr. Sidney Fishman, dated 9-25-73   | 1 | 275     |

RECEIVED DURING HEARING:

|    |   |   |         |
|----|---|---|---------|
| 36 | Bill from Henry Briggin, M.D. for claimant's visits from 12-10-69 to 5-3-73 | 5 | 276-280 |
| 37 | Resume of background and experience of Dr. Sidney Fishman                   | 9 | 281-289 |



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
 SOCIAL SECURITY ADMINISTRATION  
 P.O. BOX 2518, WASHINGTON, D.C. 20013

REFER TO:

BUREAU OF  
HEARINGS AND APPEALS

DEC 8 1973

IHL-511  
 140-32-5420

Mr. Norton H. Berger  
 Attorney at Law  
 555 Fifth Avenue  
 New York, New York 10017

Dear Mr. Berger:

Re: Mr. Douglas Buturla, 97 Rockland Avenue,  
 Staten Island, New York 10306

Enclosed is a copy of the Appeals Council's decision holding that benefits are not payable under the Social Security Act.

A certified copy of the supplemental transcript of the record, including this decision, will be prepared and forwarded to the Department of Justice for filing with the court.

**RECEIVED**

DEC 14 1973  
 CIVIL ACTIONS BRANCH  
 COURT RECORD UNIT

Sincerely yours,

H. Dale Cook  
 Chairman, Appeals Council

Enclosure

cc: Mr. Douglas Buturla

DEPARTMENT OF  
**HEALTH, EDUCATION, AND WELFARE**  
 SOCIAL SECURITY ADMINISTRATION  
 BUREAU OF HEARINGS AND APPEALS

**DECISION OF APPEALS COUNCIL**

In the case of

Douglas Buturla  
 (Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and  
Disability Insurance Benefits

140-32-5420

(Social Security Number)

By order dated January 23, 1973, the United States District Court for the Eastern District of New York remanded this case (Civil Action Number 71-C-1061) to the Secretary of Health, Education, and Welfare. Thereafter, the Appeals Council remanded the case to an administrative law judge and a supplemental hearing was held on October 24, 1973.

The administrative law judge carefully considered the entire record and concluded that the claimant was not under a "disability" as defined in the Social Security Act at any time from December 10, 1969, the date the claimant alleged he became disabled, to May 1973, when the claimant returned to work. On November 9, 1973, a recommended decision was issued to which exceptions have been received.

In his brief, the claimant's attorney objects generally to the recommended decision. Of primary concern to the Appeals Council is the allegation that the administrative law judge was biased in his handling of the case. The Council has carefully reviewed the entire proceedings and concludes that this allegation is without merit, and that the claimant received a fair and impartial hearing. It appears that this allegation is based in part upon the attorney's disagreement with the amount of consideration afforded certain portions of the evidence by the administrative law judge. This will be discussed below.

The attorney objects that a tape recording made by a consulting physician, who had examined the claimant but died before he prepared his medical report, was not produced. However, the information available to the administrative law judge indicated that the tape recording was undecipherable. The record does not reflect that the attorney himself made any serious attempt to secure the tape recording. Moreover, the claimant was subsequently examined by Herman I. Frank, M.D., who also appeared at the supplemental hearing and testified as a medical advisor. Thus, while it is unfortunate that the prior physician did not prepare a report before his death, competent medical evidence in the form of Dr. Frank's report was produced, and the attorney had ample opportunity to cross-examine the consulting physician at the hearing.

The attorney objects that the administrative law judge disregarded the fact that the claimant was found totally disabled by his employer, the New York City Police Department. However, the record shows that the administrative law judge did consider the reports from the Police Department. Moreover, section 404.1525 of Social Security Regulations No. 4 (20 CFR 404.1525) provides that the decision of any nongovernmental organization or any other governmental agency that an individual is, or is not, disabled for purposes of any contract, schedule, regulation, or law shall not be determinative of the question of whether or not an individual is under a disability for the purpose of Title II of the Social Security Act. Definitions of disability are not the same for all agencies and organizations.

The attorney objected to the citation of medical authorities by the administrative law judge regarding the diagnosing of a herniated disc. These authorities agree with the testimony of the medical advisor. Moreover, the attorney has submitted no contrary authorities for the consideration of the Appeals Council. In any event, the question of whether the claimant has a herniated disc is moot, since the administrative law judge assumed for the purpose of his decision that the claimant has a herniated disc.

The attorney objected to the hypothetical question posed to the vocational expert, stating that additional information should have been included in the question, such as a history of the claimant's medical treatment, his subjective complaints, statements of the medical advisor, and findings of various physicians on examination of the claimant. The administrative law judge asked the vocational expert to assume that the claimant "suffers from a back impairment which (1) requires him to wear a lumbosacral brace for support and (2) requires him to work at a job which is primarily seated, one with an opportunity to stand at will and which does not involve

-3-

frequent bending of the body, lifting more than 10 lbs., pushing with a force of more than 10 lbs., or pulling with a force of more than 10 lbs". Based on this hypothetical question, the expert was asked to name full time jobs the claimant could perform and he listed a member of such jobs. The Appeals Council is of the opinion that the hypothetical question propounded by the administrative law judge did not overstate the claimant's residual functional capacity. Moreover, the attorney had ample opportunity while cross-examining the expert to ask any hypothetical question he wished, but he did not avail himself of this opportunity.

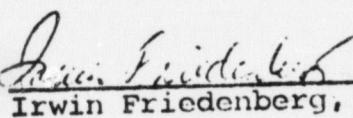
The attorney states that there is no medical proof that the claimant can perform other work. However, a review of the medical evidence of record, including the testimony of the medical advisor, convinces the Appeals Council that the claimant retains the capacity to perform sedentary and light work, as found by the administrative law judge.

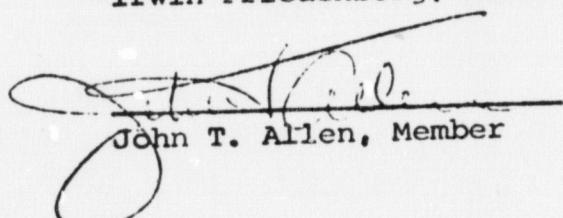
The attorney argues, in effect, that the claimant could not perform other light work outside the Police Department because he had to remain at home as his superiors routinely checked on employees who were on disability pension. This fact, however, would not bear on the issue of claimant's ability to perform the duties of the sedentary and light jobs enumerated by the vocational expert.

For the foregoing reasons the attorney's objections are overruled.

The Appeals Council adopts the findings and conclusions in the recommended hearing decision. It is the decision of the Appeals Council that the claimant is not entitled to a period of disability or to disability insurance benefits under the provisions of the Social Security Act as amended.

APPEALS COUNCIL

  
Irwin Friedenberg, Member

  
John T. Allen, Member

Date: DEC 8 1973

**92**

MORTON M. BERGER  
COUNSELOR AT LAW  
555 FIFTH AVENUE  
NEW YORK, N.Y. 10017  
TEL 986-8430

November 19, 1973

Appeals Council  
Bureau Of Hearings & Appeals SSA  
P.O. Box 2518  
Washington, D.C. 20013

Re: Claimant's Brief On  
Douglas Buturla  
140-32-5420 Social Security No.

Gentlemen:

Enclosed please find original and copy Claimant's  
Brief on the above captioned case.

Very truly yours,

*MMB*  
MORTON M. BERGER

MMB:hpr

IN THE CASE OF **CLM-140-32-5420**  
DOUGLAS BURTURLA,  
**Claimant** **PERIOD OF DISABILITY  
OND DISABILITY INSUR-  
ANCE BENEFITS  
140-32-5420  
Social Security Number**

**CLAIMANT'S BRIEF**

On Nov. 12, 1973 the instant decision was received giving 10 days to answer from Nov. 9, 1973 although the hearing was had on Oct. 24, 1973. This is a period of eight days as compared to a period of 15 days for the administrative judge. That there has been a lack of courtesy and balancing of justice on the part of the administrative judge which is shown continuously in the record. He made a point of my application to adjourn the hearing to obtain a further medical examination as a collateral issue to becloud the issues which has nothing to do with the merits of claimant's case. Although he obtained the x-rays of Dr. Harboush which he gave to Dr. Frank, he never used Dr. Harboush's tape, and never produced the tape to see if it could be used. (T Pages 56, 57 and 58). Although on page 3 of the Bureau of Hearing & Appeals decision of June 2, 1971 it was stated in respect

to claimant. "He stated that he had not returned to full duty since, '(referring to the accident of Dec. 10, 1969)', that he was sent to limited duty for approximately a week, doing a desk job, and that he just couldn't do it." And, although claimant testified (T page 50) that he returned to work "limited duty or light work," in Oct. 1970 for a few days. And, although Dr. Frank's report (exhibit 30) showed, "He worked for a while at a sedentary job with The Police Department but found that he could not even sit in one position for any period of time and he was finally re-tired from the job on June 15, 1972". (Underscoring ours). And, although I pointed out in my summation that the light work was a desk job with The Police Department (T pages 117 and 118). And, although claimant was confined to Doctors Hospital for his back for three days immediately after the accident (T page 46) and came under the treatment of Dr. Briggin who treated him on an average of three times a week to April 29, 1970 and on an average of once a week up to May 27, 1970 and an average of twice a month up to July 28, 1970 and approximately once a month to June 22, 1972 and subsequently on Feb. 21, 1973, March 29, 1973 and May 3,

1973 (exhibit 36) and during this time he was also seeing other doctors including Dr. Bosworth and Dr. Savino and having x-rays taken (exhibit 28) and was on Percodan and Talwin and muscle relaxants (T page 49) and was hospitalized again for his back in Doctors Hospital in June, 1970 for approximately one month (T page 47), all of which would prevent him from working at or holding a job. That the administrative judge self servingly and for some unfathomable reason overlooked and disregarded these ultimate facts and if he had any questions in his mind about the type of limited sedentary work claimant did for approximately one week in Oct. 1970 he never clarified it in his questioning of claimant which he could have done even after my summation since claimant was still present at the hearing. He completely disregarded the fact that the Police Department retired claimant as "being physically unfit for the performance of police duty by reason of Discogenic disease" and "was retired on a certificate of accident disability on June 15, 1972" (Exhibit 29). He failed to take judicial notice that this discharge meant that claimant was found to be totally disabled by the Police Department including the fact that he was found unfit to do sedentary work at a desk job, for the Police Department.

He referred to Dr. Bosworth's report of May 16, 1972 (part of his decision) that restricted duty "was" possible when the report of Dr. Bosworth (exhibit 28) was much more speculatigve and stated "restricted duty status would seem possible, but there might be periods of aggravated pain when it was not." (Underscoring ours) Dr. Bosworth did not "suggest" as is claimed by the administrative judge. Dr. Bosworth's exact words were "Our advice has been for surgical repair, with exploration lumbar 4 and 5, on the right and midline, and fusion lumbar 4 to sacrum. This would still be justified if the patient would accept it, and if complaints are severe enough to warrent it in his opinion". (Underscoring ours)

The administrative judge gives authorities out of context that the only way to diagnose a herniated disc is by an operation. (Decision page 12) This is further evidence of his hostility. It is obvious that the Army and Navy, the government and industry will reject job applicants on findings of a herniated disc without an operation.

Again his hostility is shown in his hypothetical question which he started where he was going to set forth certain "dysfunctions" (T page 82). Then he continued by stating that claimant suffers from a "back impairment" (T page 84) He did not state that it was a herniated disc; he did not state that claimant was twice hospitalized because of his back, he did not state that claimant was going to Dr. Briggin for his back for periods of three times a week then twice a month and once a month up to June 22, 1972 and his last visit was on May 3, 1973 and that during this time he was being seen by Dr. Bosworth and other doctors for his back; he did not say that claimant was taking drugs during this period because of his back pain; he did not state that plaintiff took traction treatment at home three times a week; that plaintiff had back pain with referred pain to his right leg; he did not state that he had attempted to do sedentary work at a desk job in Oct., 1970; he did not state that the x-rays taken on Dec. 28, 1969 were negative and the subsequent x-rays of May 16, 1972 "shows the definite narrowing of lumbar 4 interspaces" (exhibit 28 third page); he

did not say that Dr. Frank (T page 86) stated that the narrowing meant that some "disc material had been extruded at that space" (T page 11) which meant that there was an "injury" to the disc and that the injury was a "herniation"; he did not say that Dr. Frank stated that claimant was totally incapacitated as a policeman up to his retirement in June of 1972 and that since that time he was partially disabled to the present time (T page 13); he did not say that Dr. Frank found flattening even as late as August 16, 1973 which meant muscle spasm which interferes with body movement (T page 14); he did not say that claimant had diminished right ankle jerk showing irritation of the lumbar nerve on the right side or so-called right sciatica; he did not state that Dr. Frank found right lumbar neuropathy which meant nerve root pressure was present (T page 19) and that the lumbar neuropathy meant sciatica due to pressure of a herniated disc (T page 20). He did not say that Dr. Frank found impairment due to hysteria and psychogenic overlay (T page 24) and impairment in bending and walking and walking up steps (T page 25) and that Dr. Frank reaffirmed that claimant had a herniated disc which was included in his diagnosis of lumbar neuropathy and that he

reaffirmed the diagnosis of herniated disc again (T page 26); he did not state that all of the findings by Dr. Frank in respect to claimant's partial disability were as of the time of Dr. Frank's examination on August 16, 1973 only and were not retroactive to prior periods (T page 30). He didn't say that Dr. Bosworth's diagnosis of lacerated lumbar 4 disc was stated by Dr. Frank to be not different than a herniated disc (T page 33). He didn't say that Dr. Frank's diagnosis of psychogenic overlay could result from a herniated disc that continues past one or two years (T page 35) and that the psychogenic overlay and conversion hysteria is a result of the original situation (Tpage 36) so that any answer he received from Dr. Fishman was totally irrelevant and meaningless.

Even Dr. Fishman could not answer if claimant would be a good job risk for industry with a herniated disc (T page 99). Finally, based on the hypothetical question given to Dr. Fishman by the administrative judge, Dr. Fishman stated his answer to the question that claimant could do light work would be the same even for "20 years ago" (T page 100). His answer accordingly

applied even before December 10, 1969 and applied to a time when claimant did not have a herniated disc, showing that his answer was meaningless because the hypothetical question posed to him by the administrative judge was inapplicable and meaningless (T page 100). Dr. Fishman also stated that if he heard Dr. Frank state that claimant was totally disabled until June, 1972 he would not have made his previous statement in respect to claimant's disability. Dr. Fishman was a Ph. D. and not a medical doctor (T page 76).

#### RECAPITULATION

It must be concluded from the findings of all of the doctors and of Dr. Frank that claimant has a herniated disc. That he was totally incapacitated from his police work from Dec. 10, 1969 to June 15, 1972 when he was retired from the Police Department because of the herniated disc. That he was incapacitated continuously until May, 1973. That Dr. Bosworth on Oct. 26, 1970 advised claimant to try Limited Duty (Exhibit 24). Subsequently, in Oct. 1970 claimant did sedentary work for

approximately one week at a desk job in the Police Department (p. 27 of hearing on May 24, 1971). The only other time he was advised to return to Limited Duty was speculatively suggested by Dr. Bosworth on May 16, 1972 (Exhibit 28, third page). He nevertheless as a result of an "examination on May 24, 1972 by a Medical Board Police Fund Article #2 which found him physically unfit for the performance of police duty, by reason of Discogenic disease," was "retired on a certificate of accident disability on June 15, 1972."

Without a proper medical examination to determine if claimant could or could not work a decision was previously made that the claimant could work which was sustained on appeal on June 2, 1972.

Finally, a physical was had by Dr. Harboush on behalf of Social Security in June, 1973 (T page 56) wherein he took x-rays of claimant and taped his report in the presence and hearing of claimant. Dr. Harboush apparently died shortly after this physical examination. A second physical was had on behalf of Social Security by Dr. Frank on August 16, 1973. (Exhibit

30). Social Security gave Dr. Frank the x-rays taken by Dr. Harboush which Dr. Frank stated were of poor technical quality (T page 21). Although the x-rays were of poor technical quality and were produced Dr. Harboush's tape was not produced because it was allegedly "undecipherable." (T pages 56, 57 and 58). The tape was not produced to find out if it was "undecipherable" in whole or in part. Claimant heard Dr. Harboush report into the tape in substance that he had a herniated disc and was disabled unless he had a laminectomy (T page 59 and 60). Dr. Frank in his testimony could only give his findings as to claimant's disability for the date of his examination on August 16, 1973. He confirmed that even on that date there was a continuing partial disability from a herniated disc and from a psychogenic overlay. He could not testify as to any status of disability prior thereto. (T page 30).

There has been no valid medical proof by Social Security that claimant could work or was employable from Dec. 10, 1969 until June 15, 1972 and up to May, 1973.

The administrative judge brought out as another collateral issue that plaintiff was awarded

\$31,250.00 as a result of the Supreme Court action for his back injury sustained on Dec. 10, 1969. (P 12 decision). This has nothing to do with the merits of this claim but in any event attests to the recognition of the seriousness of claimant's back injuries and his incapacity therefrom. His injuries and incapacity have been documented and affirmed by doctors of high reputation and by the Pension Medical Board of the Police Department as well as by Dr. Harboush and Dr. Frank.

Claimant attempted to work at a desk job for approximately one week and was not medically required to continue this sedentary work by the Department. The administrative judge nevertheless without medical proof by Dr. Frank or Dr. Harboush supporting him gave a hypothetical question that he was able to work at a desk job from Dec. 10, 1969 to May, 1973 (T page 82).

Section 223d1 of The Social Security Act as amended has been complied with in that claimant has continuously been unable to work from Dec. 10, 1969 to May, 1973 when he was allowed to return to light work

by Dr. Briggan (T page 52). That from June 15, 1972 the date of his retirement to May, 1973 he went to a real estate office about 3 times a week to observe and learn (T page 51). He started light work in May, 1973 to the present time (T page 52).

Section 223(d)(2)A covers physical or mental impairment or impairments of such severity that he is not only unable to do his previous work but cannot, considering his age and work experience, engage in any other kind of substantial work\*\*\* (Underscoring ours). This section indicates that it is applicable where an individual has ceased being employed on the job where he was injured. Claimant was still employed by the Police Department at the time of his disability.

Even if it applies to claimant there has been no adequate and sufficient medical proof that claimant could do any other work. In any event in Oct. 1970 he did try to do light desk work which was similar to other desk jobs and could not continue doing it nor was he required medically to continue doing it by the Police Department.

Finally, and in addition the Police Department made routine spot checks on employees who are under disability and who are subject to telephone calls or superior officers usually a sergeant, coming to the house (T page 51) so that even if a police officer can do outside light work other than police work he has to remain at home or in the vicinity thereof. Further, the Police Department does not permit "moonlighting" which is any outside employment other than the job at the Police Department even where the employee is well. (T page 51). That a violation can cause the dismissal of the employee from the Police Department.

Why this claimant is singled out and given unfair treatment is beyond comprehension. He served in the United States Navy for two years and in the Police Department for six years with honor. If there was some other record, other than has been produced, that is reflecting unfavorably against the claimant he should have been entitled to have it produced and the opportunity to bring it to the light of scrutiny.

He has suffered a crippling painful

injury to his back that has incapacitated him from Dec. 10, 1969 until May, 1973 and is partially incapacitated for the rest of his life. At a comparatively young age he has been cut down from a bright and hopeful career with the Police Department.

He deserves better treatment, not sympathy, but fair and just and equal treatment as anybody else.

This record from the beginning to end is most peculiar as claimant appears to have been deliberately targeted.

Under the law, under the ultimate facts, as an American and a taxpayer, he should not be discriminated against but should be accorded equal justice as is required and he is entitled to receive Social Security benefits, without attempting unjustly and unfairly and not in good faith to defeat his legitimate and proven honest claim.

In the interests of justice an award

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must be made on his behalf if not up to May, 1973 then at  
the very least and minimum up to June 15, 1972.

Dated: New York, New York  
Nov. , 1973

MORTON M. BERGER  
Attorney for Claimant  
Office & P. O. Address  
555 Fifth Avenue  
New York, New York

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

NOTICE OF RECOMMENDED DECISION  
ADMINISTRATIVE LAW JUDGE  
OF HEARING EXAMINER ON COURT REMAND

PLEASE TAKE NOTICE that, pursuant to the Appeals Council's order of April 9, 1973 remanding this case to the ~~hearing examiner~~, there is enclosed here-with the findings of fact, conclusions of law, and recommended decision of the ~~hearing examiner~~.  
Administrative law judge

You are hereby notified of your right to file briefs or other written statements of exceptions and comments as to applicable fact and law. Any such briefs or written statements should be sent to the Appeals Council, Bureau of Hearings and Appeals, SSA, P.O. Box 2518, Washington, D.C. 20013, within ten (10) days from the date shown below. After the 10-day period has expired, the Appeals Council will review the record and issue its decision.

This notice and enclosed copy of the ~~hearing~~ administrative law judge's findings of fact, conclusions of law, and recommended decision, mailed to the claimant and his representative, if any, on

November 9, 1973

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

RECOMMENDED HEARING DECISION

In the case of

Douglas Buturla

(Claimant)

(Who is Elmer) (Leave blank if same as above)

Claim for

Period of Disability and  
Disability Insurance Benefits

140-32-5420

(Social Security Number)

This case is before the undersigned following a remand order issued by the United States District Court for the Eastern District of New York in Civil Action No. 71 C 1061 to the Secretary of Health, Education, and Welfare.

On June 2, 1971, an administrative law judge (then called hearing examiner) issued a decision with respect to claimant's application, filed April 14, 1970, for the establishment of a period of disability and for disability insurance benefits under the provisions of sections 216(i) and 223, respectively, of the Social Security Act. In his decision, the administrative law judge held that the claimant was not entitled to the benefits for which he filed application.

The claimant requested review of the decision on June 4, 1971 but the Appeals Council denied his request on June 29, 1971. Thereafter, the claimant commenced a civil action in the United States District Court which remanded the case "for further administrative action."

The Appeals Council vacated its June 29, 1971 denial of claimant's request for review and remanded the case to the undersigned on April 9, 1973 "for further proceedings, including holding a hearing at which a vocational expert shall testify" and to issue a recommended decision. After proper notice, a supplemental hearing was held on October 24, 1973 with the claimant present and participating. He was represented by his attorney, Morton M. Berger. Dr. Sidney Fishman, a vocational expert, testified at the request of

the administrative law judge. Dr. Herman I. Frank, an orthopedic surgeon who examined the claimant at Government expense, testified at the request of the claimant's attorney.

#### STATEMENT OF LAW AND ISSUES

The general issue before the undersigned is whether the claimant is entitled to the disability benefits provided by the Social Security Act. The specific issues are whether the claimant was under a "disability," as defined in the Act, and, if so, when such disability commenced and the duration thereof; and whether the special earnings requirements of the Act are met for the purpose of entitlement.

Section 223(d)(1) of the Social Security Act, as amended, defines "disability" (except for certain cases of blindness) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 223(d)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country."

The claimant's attorney possessed copies of all the exhibits received in evidence by the administrative law judge who issued the decision of June 2, 1971, namely, exhibits 1 to 26, inclusive. Copies of exhibits 27 to 37, inclusive, received in evidence on October 24, 1973, were also made available to him. A copy of the transcript of the recent hearing will be mailed to him with a copy of this decision.

The claimant's attorney waived his right to submit proposed findings of fact and conclusions of law in writing (T 117)<sup>1/</sup> and he presented oral argument. The administrative law judge has considered all the evidence of record, the testimony adduced at the hearings held on May 24, 1971 and October 24, 1973, and the closing argument of the claimant's attorney, in arriving at this recommended decision.

#### SUMMARY OF THE RECORD

The claimant was born in New Jersey on March 31, 1943 and he completed a high school education. He then was on active duty in the U.S. Navy for two years where he was assigned as a storekeeper with duties of checking incoming supplies against a receiving list, maintaining inventory records and computing the cost of feeding a sailor. His vocational experience subsequent to his discharge from military service consisted of four months loading and unloading trucks for the United Parcel Service, one year as an exterminator and four years as a patrolman for the New York City Police Department. He sustained an on-the-job injury in an automobile accident on December 10, 1969 and he was immediately taken by ambulance to Doctors' Hospital. He did no work until October 1970 when he was assigned to limited duty at which he remained for about one week. He was relieved from this assignment because of complaints of severe pain of the low back radiating down the right leg. He did no further work for the Police Department from which he was separated, because of disability, at 3/4s pay, on June 15, 1972.

In August 1972, the claimant arranged to observe the routine, without compensation, at a real estate office. He drove from and to his home. He reported about two times a week and stayed about four hours each time. He concluded that he was not interested in this type of activity and he discontinued it in December 1972.

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<sup>1/</sup> References to the transcript of the hearing held on October 24, 1973 will be identified by the letter "T" followed by the page number(s). References to the record submitted to the Court will be identified by the letter "R" followed by the page number(s).

In May 1973, his physician, Dr. Henry Briggin, recommended that he do some sort of light work (T 52). Thereafter, the claimant began to work in his wife's pet-grooming shop, replacing a salaried, part-time employee (T 67). His duties consist of bathing dogs as well as cutting and brushing their hair<sup>2/</sup>.

At the supplemental hearing, the claimant described himself as being 72" in height and weighing 200 lbs. which is his usual weight. He is right-handed. He lives with his wife and two infant children in a two-family house on Staten Island. He drove from his home to his attorney's office which is located on 5th Avenue and 46th Street in Manhattan.

The claimant also testified that he wears a back support except when in bed, that he takes three types of medications prescribed by his physician and that he utilizes a traction machine at home a few times a week. He was confined at Doctors' Hospital for three days immediately following the accident and for three weeks starting on June 19, 1970. He was treated conservatively each time.

At the hearing held on May 24, 1971, the claimant testified that his activities of bending forward, backward and to the side were restricted, that prolonged sitting or standing caused back pain and that he experienced extreme pains in the back which radiated down the right leg into the toe (R 30). At the supplemental hearing, he testified that the pain in the back and in the right lower extremity has remained the same (T 53-54).

The medical evidence herein consists of reports from Drs. Thomas Q. Garvey (exhibit 17), Russo (exhibit 23), Henry Briggin (exhibits 11, 13, 19, 20, 21, 27 and 32), David M. Bosworth (exhibits 24, 26, 28), Stephen M. McCoy (exhibits 14, 22 and 29) and Herman I. Frank (exhibit 30). In addition, Dr. Frank testified at the supplemental hearing, and Dr. Briggin submitted a statement of his fee for services rendered the claimant (exhibit 36).

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2/ As a result of this activity, the claimant's attorney stated that the claim is for a period of disability commencing on December 10, 1969 and ending in May 1973 (T 67-68).

Dr. Garvey conducted a neurological examination of the claimant on May 26, 1970. His diagnosis was traumatic neuritis of the femoral nerve of the right anterior thigh. He recommended conservative treatment and his prognosis was guarded.

Dr. Russo submitted a report in late 1970 in which he states that the claimant was under treatment for essential hypertension.

Dr. Briggin, an orthopedic surgeon, submitted reports with respect to his treatment of the claimant since December 10, 1969 on which day the latter sustained an on-the-job injury to his lower back, right hip and right lower ribs in an automobile accident. The claimant was hospitalized immediately. X-rays were negative for fracture. The claimant was treated conservatively and was discharged three days later using a rubber foam strapping. Diagnoses were (1) ligamentous sprain of the dorsolumbar spine and (2) contusion of the right lower ribs.

On December 22, 1969, the claimant complained of lower back pain with radiation to the shoulders, aching in the right hip and an inability to sit for a prolonged period. Examination disclosed restriction of trunk movements, tenderness over the lumbosacral spine and right sacroiliac area with restriction of straight leg raising. The claimant was started on physiotherapy treatments. A lumbosacral support was prescribed on January 5, 1970.

On March 9, 1970, the claimant was somewhat improved although he still complained of residual pain in the lower back with radiation down the left lower extremity. There was less restriction of straight leg raising which still produced pain. There were no neurological findings.

The claimant continued to be treated for his complaints with physiotherapy and exercises on a regular basis. However, his symptoms persisted and he was rehospitalized on June 19, 1970. He received medication, physiotherapy, pelvic traction and complete bed rest. EMG studies and a neurological consultative examination were negative. The claimant was discharged on July 10, 1970, somewhat improved, with the diagnosis of ligamentous sprain of the dorsolumbar spine with residual symptoms still present.

When examined on January 11, 1971, the claimant was noted to undress with some difficulty. Trunk movements were restricted. There was 2+ loss of tone of the right buttock. Straight leg raising on the right was restricted. Sensation was diminished. There was no weakness of dorsiflexion of the great toe. A diagnosis of nerve root pressure, low lumbar on the right, was added to the previous diagnoses.

The claimant was again seen on June 7, 1971. He complained of constant pain in the lower back with radiation down the right lower extremity. On examination, trunk movements were restricted, straight leg raising produced pain, Lasegue sign on the right was 3+ and on the left it was 2+, sensation in the right lower extremity was diminished, and there was diminution of the right knee jerk. In addition to the diagnoses mentioned above, one of probable herniated disc, low lumbar on the right, was made.

Surgery was recommended to the claimant on or about October 14, 1971 but he decided to postpone it. Complaints, objective findings and diagnoses on that day were substantially the same as previously. This was also true on April 10, 1972. In a letter dated June 18, 1973, the doctor stated that the claimant received his medical discharge from the Police Department and that a laminectomy may not be necessary if the claimant refrained from police work and restricted himself to sedentary employment.

Dr. Bosworth, an orthopedic surgeon, submitted reports of intermittent examinations of the claimant who was first seen on October 26, 1970. Chief complaints were lumbar and lumbosacral pain radiating to the right lower extremity increased by coughing. Objective findings were restricted lumbosacral motion, protection, a positive Lasegue on the right and lumbosacral pain on forced flexion of the head. The doctor studied x-rays taken on May 4, 1970 and October 7, 1970. On the former day, the lumbosacral spine, the sacroiliac joints and the right hip joint were negative. On the latter day, there was a slight narrowing of the L-4 disc interspace. Diagnosis was lacerated L-4 disc with only slight degenerative changes. Recommendations were to continue wearing the lumbosacral belt support, to take warm baths before retiring and to use a firm bed support. The doctor expressed the opinion that limited duty work would be beneficial.

The claimant was seen again on January 18, 1971. He reported that he returned to restricted duty but stopped working after experiencing an attack of pain. Examination showed restricted lumbosacral motion, protection, a positive Lasègue bilaterally, weakness of dorsiflexion of the right hallux and decreased sensation of the L-5 nerve root level downwards on the right. X-rays taken on January 12, 1971 showed slightly greater narrowing at the L-4 interspace than was present on October 7, 1970. The doctor recommended surgery in the nature of a fusion of L-4 to the sacrum with a distraction graft, and he stated that the claimant was disabled for police duty.

Dr. Bosworth next saw the claimant on May 11, 1972 on which day there was no change in his complaints. The doctor mentioned a January 19, 1972 Police Pension Fund Medical Board report of essentially negative findings. He studied an x-ray taken on May 11, 1972 which, he said, showed a slight narrowing at the L-4 interval and slight imbrication on changes in facets between L-4 and L-5. Objective findings were limitation of flexion, moderate protection, weakness of dorsiflexion of the right hallux, decreased right ankle and knee jerks, decreased sensation of the L-5 nerve root downwards on the right and positive Lasègue bilaterally. The doctor ordered new x-rays of the lumbosacral spine which were taken on May 16, 1972 at the Police Department whose physician interpreted them as negative. Dr. Bosworth, however, stated that they showed narrowing of the L-4 interspace and imbrication of the facets between L-4 and L-5. He still suggested fusion and he expressed the opinion that restricted duty status was possible except during periods of aggravated pain.

Dr. McCoy, chief surgeon of the New York City Police Department, furnished statements on May 4, 1970, August 14, 1970 and May 1, 1973 to the effect that the claimant, a patrolman, suffered a low back sprain and contusion of the right lower ribs on December 10, 1969. He was retired on June 15, 1972 on a certificate of accident disability. This was based on a finding of a Police Pension Fund Medical Board on May 24, 1972 that the claimant was unable to perform police duty due to discogenic disease.

Dr. Frank, an orthopedic surgeon, furnished a report of an examination done on August 16, 1973. Chief complaints were pain in the back, occasionally running down the entire spine from the scapula, and pain in the right leg. The claimant stated that he had no plans of attempting any type of work activity. On examination, he was noted to wear a back support. However, he moved fairly briskly and he removed his trousers readily while standing. He was extremely tense and he perspired freely from his palms and axillae. Weight was 200 lbs. for a height of 71". The claimant stood on one leg with good stability. The left shoulder was slightly higher than the right. The back muscles were supple but there was slight flattening of the normal lumbar lordosis. The neck muscles also were supple and there was full motion of the neck. Motions of the upper extremities were unrestricted. Back motions were voluntarily limited to 40° flexion, 5° extension and 10° side bending bilaterally. The claimant allowed 45° of straight leg raising on the left and 10° on the right. Arm reflexes were normal. The left knee jerk was diminished as was the right ankle jerk but the right knee jerk was normal. Pulses of the legs and motion of all lower extremity joints were normal. The right thigh and calf were 1/4" more than the left in circumference although there was no noticeable edema. There was hypesthesia of the entire right lower extremity unrelated to either the peripheral or segmental nerve distribution. An x-ray of the lumbosacral spine, taken on June 11, 1973, was poor in quality. It showed no narrowing of any of the lumbar interspaces. Diagnosis was history of low back injury, probably mild, right lumbar neuropathy with considerable psychogenic overlay and hysterical anesthesia of the right lower extremity. The doctor concluded his report as follows:

It is unfortunate that patient has little insight into his difficulties. There is a certain degree of back strain and right lumbar neuropathy but no more than is found in many people who are at work on full time. The basis for his present difficulties and inability to move is mainly psychogenic. It is nevertheless real and he needs some psychiatric support if he is not to become invalided at any early age.

As mentioned above, Dr. Frank testified at the supplemental hearing at the request of the claimant's attorney. His testimony was in substantial agreement with his report. He stated that a myelogram or surgery is required for a definitive diagnosis of a herniated disc but that such a condition could be implied (T 20). In writing his report of the August 16, 1973 examination, he assumed that a herniated disc was present (T 25-26). Based on his orthopedic findings, it was his opinion that: (1) there was no impairment of claimant's ability to sit or stand; (2) the claimant could walk up to 10 blocks; (3) the claimant could climb a flight of stairs fairly frequently; (4) the claimant could use public transportation; (5) the claimant's ability to drive a vehicle depended on the degree of his confidence; (6) the claimant could lift and carry weights of up to 25 lbs.; (7) the claimant could push or pull with a force of up to 25 lbs. (T 24-25). He stated that these limitations were "very conservative" (T 39). He agreed, however, that other physicians might arrive at different conclusions (T 40), that the claimant was unable to perform police duties and that he has been partially disabled since June 1972 (T 13). He also said that the claimant's return to some type of employment would be "very desirable medically" (T 28).

Dr. Sidney Fishman, whose qualifications are set forth in exhibit 37<sup>3/</sup>, testified as an expert vocational witness at the request of the administrative law judge. Briefly stated, he received a Master of Arts degree in Vocational Guidance and a Doctorate in Psychology. He is a member of the National Vocational Guidance Association and the American Rehabilitation Counselors Association as well as a Fellow of the American Psychological Association, among other professional organizations. He directs a program of research and education, relating to the rehabilitation of orthopedically handicapped individuals requiring the use of artificial limbs and braces, at New York University.

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3/ Exhibit 34, identified on the list of exhibits as a resume of the background and education of Dr. Fishman, consists primarily of the qualifications of another vocational expert. It was erroneously included among the exhibits instead of the qualifications of Dr. Fishman.

Dr. Fishman testified that his employment had required him to read and evaluate medical reports, that he has made studies of the vocational potentialities of individuals with various types of impairments, that he was familiar with the employment situation in the New York City area and that he had knowledge of the duties of jobs in various types of businesses (T 78). He further testified that he provided vocational counseling to individuals with back impairments, including herniated discs and nerve root pressure (T 79). The witness stated that exhibits 1 to 32 were made available to him prior to the hearing, that exhibit 36 was examined by him during the course of the hearing, that he was familiar with the contents of all these exhibits, that he was present throughout the hearing and that he had listened to the testimony taken at the hearing (T 78-79).

Dr. Fishman was asked to express an opinion whether or not the claimant was able to work at any job based on his age, education, training and work experience, and the following hypothesis:

Assume that I should find that Mr. Buturla suffers from a back impairment which (1) requires him to wear a lumbosacral brace for support and (2) requires him to work at a job which is primarily a seated one with an opportunity to stand at will and which does not involve frequent bending of the body, lifting more than 10 lbs., pushing with a force of more than 10 lbs. or pulling with a force of more than 10 lbs., are you able to state whether or not he was able to work at any \* \* \* full time job? (T 84-85).

Dr. Fishman was of the opinion that the claimant could perform the duties of a number of positions available in the New York City economy requiring training of from several hours to one week. He placed the positions in four categories. The first was office clerical and it included reservation clerk, general clerk, information

clerk and telephone order clerk. The second category was bench assembler and it included assembler of small products, assembler of electrical products, packer, trimmer, paster and solderer-assembler. The third category was bench machine operations and it included punch press operator, drill press operator, stapling machine operator, crimping machine operator, heat sealing machine operator, eyelet machine operator and grinder-polisher. The fourth category was inspector, visual or by use of gauges or jigs. The jobs in categories two and three could be found in the footwear, belts, wallets and handbags, toys and dolls, pens and pencils, pharmaceuticals, small metal products and small electrical appliances industries (T 87-96). He further stated that most of the firms where these jobs exist will hire impaired individuals inasmuch as they are primarily interested in the ability to perform the duties of the jobs on a full-time basis (T 97).

#### EVALUATION OF THE RECORD

On the basis of the evidence herein, the question before the administrative law judge is whether or not the claimant has established by pertinent medical evidence the existence of an impairment or impairments of sufficient severity to constitute a "disability" as that term is defined in the Social Security Act.

Section 404.1502 of Social Security Administration Regulations No. 4 [20 CFR 404.1502] provides, in pertinent part, that whether or not an impairment in a particular case constitutes a disability depends on all the facts of that case, and that primary consideration is given to the severity of the individual's impairment. Consideration is also given to such other factors as the individual's age, education and work experience. This section further provides that it must be established that the individual's physical or mental impairment or impairments are of such severity, i.e., result in such lack of ability to perform significant functions as moving about, handling objects, hearing, speaking, reasoning and understanding that he cannot engage in any kind of substantial gainful activity.

The claim herein is for disability benefits for the period from December 10, 1969 to May 1973 based on

a back injury. The claimant commenced an action for damages against the tort-feasor which he settled for \$31,250.00 (T 69).

There have been a number of diagnoses relating to claimant's back impairment submitted by the physicians who have examined and/or treated him, the most severe of which is a herniated lumbar disc. It is noted that the claimant never had a myelogram performed. An authority in the field of orthopedics stated:

The outstanding indications for a pantopaque spinogram (i.e., myelogram) is to confirm the diagnosis of a suspected tumor of the spinal cord or protrusion of an intervertebral disk and to localize the lesion, if present.

And another authority has stated:

It is possible to make a presumptive diagnosis of herniated lumbar disk on the basis of clinical findings alone, but for a definite diagnosis myelographic studies are necessary.

And another:

The true diagnosis of herniated intervertebral disc is made on the operating table.

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- 4/ Dr. Philip Lewin, The Back and Its Disk Syndromes, 2d ed., Philadelphia, Lea & Febiger, 1955 (p. 96).
  - 5/ Dr. Bernard J. Alpers, Low Back Pain and Sciatica - The Case for Medical Management, Med. Clinics of North America, Sept. 1956 (p. 1445).
  - 6/ Irving Goldstein, Esq. and Dr. L. Willard Shabat, Medical Trial Technique, Chicago, Callaghan and Co., 1942 (p. 248).

Dr. Frank's testimony was in agreement with the foregoing (T 20). Consequently, the undersigned is unable to make a definite finding that a herniated disc actually exists. However, for the purpose of this decision, he will assume that it does. Apropos of such a condition, another authority stated:

The herniated disk syndrome, whether in the cervical or lumbar area, is characterized by a history of remissions and exacerbations.

Thus, there are periods when the herniated disc sufferer experiences pain and there are other periods when he is pain-free. During the latter periods, he is able to perform many activities so long as they do not involve heavy lifting or excessive bending.

As a matter of fact, the claimant did return to some work activity in August 1972 which he relinquished after four months but not on the ground of disability. He decided that such employment was not for him. And he has been working in his wife's pet-grooming shop since May 1973. He limits his claim for disability benefits to the period ended in such month. The question arises as to whether or not he was able to return to some form of substantial gainful activity prior to May 1973.

With regard to the foregoing question, the undersigned takes note of the following: (1) On January 18, 1971, Dr. Bosworth found the claimant disabled for police duty but not for less strenuous duties (exhibit 24); (2) The Police Pension Fund Medical Board reported essentially negative findings on January 19, 1972 (exhibit 28); (3) On May 16, 1972, Dr. Bosworth reported that restricted duty status was possible (exhibit 28).

Dr. Frank, the orthopedic surgeon who examined the claimant on August 16, 1973, testified that such conditions as flattening of the normal lumbar lordosis and restrictions of straight leg raising do not affect the claimant's ability to function but that the muscle spasm which causes them could (T 14, 16). The claimant underwent many examinations done by Dr. Briggan and a few done by Dr. Bosworth, both of

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7/ Dr. Ephraim Roseman, Pain Associated with Protruded Intervertebral Disks, Med. Clinics of North America, Nov. 1958 (p. 1582).

whom also are orthopedic surgeons. Neither reported a finding of muscle spasm during any of the examinations. It is safe to conclude that the times of exacerbation of the claimant's condition were few and far between and that his back impairment was in remission most of the time.

Based on his orthopedic findings, Dr. Frank expressed the opinion that the claimant could sit or stand without any problem, could lift and carry weights of up to 25 lbs., and could push or pull with a force of up to 25 lbs. (T 24-25). Bearing these restrictions in mind, the administrative law judge propounded more favorable limitations (T 84-85) for the consideration of Dr. Fishman, a well-qualified vocational expert, when he asked the latter whether or not the claimant was able to work at any job. It was his opinion that the claimant could perform the duties of many positions available in the New York City area (T 87-96). The claimant's attorney attempted to discredit this testimony by emphasizing the fact that the claimant was found disabled for police duties but he did not succeed in invalidating the vocational expert's opinion. The Social Security Act does not provide for the payment of benefits to an individual who is unable to perform his usual work as long as he is able to perform any substantial gainful activity. There is no doubt that the claimant was able to discharge the duties of the positions mentioned by the vocational expert on and after the day he was examined by Dr. Frank. The question, then, is whether he was able to perform such duties prior thereto.

As mentioned above, Dr. Frank was of the opinion that the claimant could lift and carry weights of up to 25 lbs. and could push or pull with a force of up to 25 lbs. The administrative law judge finds nothing in the medical reports of examinations from December 10, 1969 through the day of Dr. Frank's examination which establishes that the claimant, for a continuous period of not less than 12 months, was unable to manage the foregoing activities at 40% of the levels considered by Dr. Frank to be very conservatively attainable. These reduced levels, i.e., 10 lbs. rather than 25 lbs., were used by the undersigned when he asked the vocational expert for his opinion as to whether or not the claimant could work. The opinion was that there were many positions

the claimant could perform. The administrative law judge adopts the vocational expert's opinion and finds that the claimant was able to perform the duties of the jobs mentioned throughout the period involved herein except on the few occasions when his back condition was in a state of exacerbation.

There is some evidence that a functional overlay exists. This was reported by Dr. Frank but by no other physician. It may well be that the claimant was tense and nervous at the time of his examination by Dr. Frank. One could only speculate as to the cause thereof. It may well have been that the claimant thought that the results of the examination would militate against his receiving the disability benefits for which he filed application or even in his court action against the tort-feasor. It may also well be that Dr. Frank would not have reported a psychogenic problem if he knew that the claimant had been working since May 1973. It appears that the latter stated that he was not employed and that he had no plans for attempting any type of work activity. Be that as it may, the administrative law judge finds that the claimant has not had any psychiatric condition which prevented him from engaging in substantial gainful activity at any time prior to the date of this decision.

During the course of the hearing, the attorney for the claimant requested that Dr. Bosworth be subpoenaed (T 32) and that the hearing should be continued in order to receive oral testimony from Dr. Briggan (T 111). Both are claimant's personal physicians. The administrative law judge denied the attorney's applications as being untimely made.

On April 12, 1973, the undersigned requested the attorney to submit up-to-date medical information. Follow-up letters were sent to him on May 1 and May 9 before he responded with an April 13, 1972 report from Dr. Briggan. On September 7, 1973, the attorney was asked to state the witnesses he expected to call. In his reply of September 12, he said that he was "attempting to obtain Dr. David M. Bosworth or Dr. Henry T. Briggan for the hearing." On September 14, 1973, the hearing was scheduled for October 3. On September 24, the attorney requested an adjournment because he was

8/ The attorney's letter of May 15, 1973 erroneously gave the date as April 13, 1973.

representing the claimant in a court action which was to commence on October 1. His request was approved and it was agreed that the hearing could be rescheduled for October 17 or any subsequent date. The hearing was then set down for October 24 and the attorney responded that he would be present. He made no request for the issuance of a subpoena nor did he indicate any problem insofar as witnesses were concerned until October 23. On that day, he requested another adjournment on the ground that Dr. Briggan was on vacation and the whereabouts of Dr. Bosworth, who had retired, were unknown. His request was denied and he was instructed to make his application at the hearing. He did so, again stating that Dr. Bosworth had retired (T 115). However, it appears that Dr. Briggan had not been on vacation (T 115).

Furthermore, the administrative law judge accorded the written reports of Drs. Briggan and Bosworth as much consideration as he would have had they repeated the information contained therein at a hearing.

In view of the foregoing, the undersigned feels that the claimant was not entitled to a further delay in concluding this matter.

RECOMMENDED FINDINGS

From an analysis of all the evidence of record, the administrative law judge makes the following recommended findings:

1. The claimant met the statutory earnings requirement for a disability insured status on December 10, 1969, the date of alleged "disability" onset, and he continues to meet such requirement through the date of this decision.
2. The evidence establishes that the claimant probably has a herniated lumbar disc.
3. The claimant's back impairment prevented him from performing the duties connected with his usual job as patrolman with the New York City Police Department.

4. Except for the infrequent times that the claimant's back condition was in a state of exacerbation, he has been able to perform such activities as lifting and carrying 25 lbs. as well as pushing and pulling with a force of 25 lbs.

5. A well-qualified vocational expert testified that the claimant could perform the duties of many jobs in the New York City area within limitations more favorable for the claimant than the foregoing.

6. The evidence fails to establish that the claimant has any impairment, or combination of impairments, which prevented him from engaging in substantial gainful activity for any continuous period which lasted at least 12 months prior to the date of this decision.

7. The claimant was not under a "disability," as defined in the Social Security Act, at any time prior to the date of this decision.

RECOMMENDED DECISION

It is the recommended decision of the undersigned that the claimant, based on his application filed on April 14, 1970, is not entitled to a period of disability or to disability insurance benefits under the provisions of sections 216(i) and 223, respectively, of the Social Security Act, as amended.

s/ Samuel C. Berson  
\_\_\_\_\_  
Samuel C. Berson  
Administrative Law Judge

Dated: November 9, 1973

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
 SOCIAL SECURITY ADMINISTRATION  
 BUREAU OF HEARINGS AND APPEALS

/SUPPLEMENTAL  
 AMENDED NOTICE OF HEARING

In the case of

Douglas Futurla  
 (Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and  
Disability Insurance Benefits

140-32-5420  
 (Social Security Number)

TO: Mr. Douglas Futurla  
 97 Rockland Avenue  
 Staten Island, New York 10306

The hearing in this case which was scheduled for October 2, 1973 (Date) will be

held instead on the 24th day of October at 1:30 o'clock in  
 room 3138 of Federal Building, 26 Federal Plaza  
 (Number and Street)

New York  
 (City)

New York  
 (State)

IMPORTANT—Please sign and return at once the enclosed postal card notifying me whether you will be present at the above time and place. No postage is required on this card.

Your attorney requested a postponement of the hearing.

Administrative Law Judge

Date

Telephone Number

September 25, 1973

204-0815

cc: Representative (Name and Address)

Morton H. Berger, Esq. — 555 Fifth Avenue — New York, New York 10017  
 District Office (Address)

595 Forest Avenue — Staten Island, New York 10410  
 Enclosure

Mail Address

Samuel C. Eerson, Administrative Law Judge  
 26 Federal Plaza, Room 3138  
 New York, New York 10007

MORTON M. BERGER  
COUNSELOR AT LAW  
555 FIFTH AVENUE  
NEW YORK, N. Y. 10017  
TEL 986-8430

September 24, 1973

Dept Of Health, Education & Welfare  
26 Federal Plaza Room 3138  
New York, N.Y.

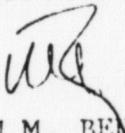
Attn: Hon Judge Samuel C. Berson

Re: Douglas Buturla  
A/N 140-32-5420

Dear Hon. Judge Berson:

This is to confirm the adjournment of the above proceeding to October 17, 1973 or to a subsequent date subject to your disposition.

Appreciatively and Respectfully,

  
MORTON M. BERGER

MMB:hpr

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Tel. No. 264-3815

26 Federal Plaza, Room 3138  
New York, New York 10007  
September 14, 1973

Morton M. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Buturla  
A/N 140-32-5420

Dear Mr. Berger:

I have scheduled the hearing in the case of Douglas J. Buturla for 3:00 p.m. on October 3, 1973. A copy of the notice of hearing is enclosed.

Also enclosed is a letter sent by me to Dr. Sidney Fishman, a vocational expert, as well as his professional qualifications, copies of which I intend receiving in evidence on October 3. I have marked Dr. Henry Briggin's report of June 13, 1973 as exhibit 32 for identification and a copy thereof was included among the documents forwarded to the vocational expert. *See Ex. 33*

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

Enclosures

DEPARTMENT OF THE SOCIAL SECURITY, WILBUR E. DAVIS,  
SOCIAL SECURITY ADMINISTRATION,  
BUREAU OF HEARINGS AND APPEALS

## NOTICE OF HEARING: SUPPLEMENTAL HEARING

In case of:

Claim For

Douglas Futuria

(Claimant's Last Name)

J40-32-3170

(Social Security Number)

Period of Disability and  
Disability Insurance Benefits

TO: Mr. Douglas Futuria  
100-32-3170  
Staten Island, New York 10305

I/ As remarked below

Pursuant to the preceding statement and provisions of section 205(i) of the Social Security Act, a hearing will be held by the undersigned, an Administrative Law Judge of the Bureau of Hearings and Appeals, on the

3rd

day of October \_\_\_\_\_ at 1:00 o'clock in Room 3128 of \_\_\_\_\_ Federal \_\_\_\_\_ Building,  
26 Federal Plaza \_\_\_\_\_, New York \_\_\_\_\_, New York \_\_\_\_\_.  
(City) \_\_\_\_\_ (State) \_\_\_\_\_

The general issues to be determined are whether you are entitled to a period of disability under section 216(i) and to disability insurance benefits under section 223(a).

The specific issues to be decided are: (1) Whether you have the required insured status under the law; and if so, as of what date(s); (2) The nature and extent of your impairments; (3) Whether your impairment has lasted or can be expected to last for a continuous period of at least 12 months; or can be expected to result in death; (4) Your ability to engage in substantial gainful activity since your impairment began; (5) When your disability, if any, began.

This hearing involves your application(s) filed on April 14, 1970 \_\_\_\_\_.

You should be prepared to prove that you were under a disability on or before October 2, 1972 \_\_\_\_\_.

It may be to your interest to have your physicians appear at the hearing to testify on your behalf. Be prepared to furnish your entire work history, including names of employers, dates of employment and a description of duties performed; schools and training; names of physicians who have examined or treated you; and periods of hospitalization with names of hospitals.

REMARKS: I/ This supplemental hearing is being scheduled pursuant to an Order of the Appellate Council dated April 9, 1973, following remand of Civil Action No. 71 C 1541 by the United States District Court for the Eastern District of New York. A vocational expert will be present to give testimony. IMPORTANT: Please sign and return at the enclosed post card notifying me whether you will be present at the above time and place. No postage is required on this card.

Administrative Law Judge



Date

Telephone No. 264-3815

Mail Address

Samuel C. Eerson, Administrative Law Judge  
26 Federal Plaza, Room 3128  
New York, New York 10007

September 14, 1973

cc: Representative (Name and Address)

Morton M. Berger, Esq.

555 Fifth Avenue New York, New York 10017

Post Office Box 1000

505 Forest Avenue Staten Island, New York 10310

Enclosure

READ THE OTHER SIDE OF THIS NOTICE FOR FURTHER INFORMATION REGARDING YOUR HEARING

**IMPORTANT INFORMATION****What is Meant by "Disability"**

To be found under a "disability", an individual must be unable to engage in any substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of at least 12 months, or can be expected to result in death. The impairment must be so severe as to prevent the individual from engaging not only in his usual work, but, considering his age, education, previous training and work experience, in any other kind of substantial gainful work which exists in significant numbers either in the region in which he lives or in several regions of the country.

**Appearance At Hearing**

The date and time of this hearing have been set aside especially for you. Your failure to appear without good reason may cause dismissal of your Request for Hearing. Even though there is good reason, any postponement will delay disposition of your case. If an emergency arises preventing your appearance after you mail the postal card stating that you will be present, notify the Administrative Law Judge promptly and give your reasons. Also indicate the earliest date after which your case can be rescheduled for hearing.

**Conduct of Hearing**

The law places on you the burden of submitting evidence to support your claim. Bring to the hearing all evidence not already presented in your case.

You will have an opportunity to examine the documentary evidence on the day of the hearing. If you wish to examine it before the day of the hearing you may do so at the hearing office.

At the hearing the Administrative Law Judge will inquire fully into the medical evidence. You may present evidence either in the form of written documents or the testimony of witnesses, or both. Your testimony and that of any witnesses will be under oath or affirmation, and a verbatim record of the proceedings will be made. You may suggest findings of fact or conclusions of law and present arguments orally or in writing.

**Representation**

While it is not required, you may be represented at the hearing by an attorney or other qualified person of your choice, if you desire assistance in presenting your case. Any fee which your representative wishes to charge for his services in your case must be approved by the Bureau of Hearings and Appeals. Your representative must petition for fee approval at the conclusion of his services, and furnish you with a copy of his petition.

If you are found entitled to benefits and your representative is an attorney, 25 percent of your back benefits will normally be withheld for payment to your attorney upon approval of his fee. If the approved fee is less than the 25 percent withheld, the difference will be paid directly to you. If the approved fee is more than 25 percent, payment of the difference is a matter to be settled between you and your attorney.

If your representative is not an attorney, none of your benefits will be withheld; and payment of the fee which is approved is a matter to be settled between you and him.

If you have any other questions, your local Social Security office will be glad to help you.

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MORTON M. BERGER  
COUNSELOR AT LAW  
555 FIFTH AVENUE  
NEW YORK, N.Y. 10017  
TEL 986-8430

September 12, 1973

Department Of Health, Education & Welfare  
Social Security Administration  
26 Federal Plaza, Room 3138  
New York, N.Y. 10007

Attn: Samuel C. Berson  
Administrative Law Judge

Re: Douglas J. Buturla  
Inj: 12-10-69

Bent Mr. Berson:

Enclosed is copy of report of Dr. Henry Briggan dated June 18, 1973 which my past secretary Miss Johnson was supposed to mail to you on June 20, 1973.

Will you please include this report to be used in evidence on the hearing. I would desire to cross-examine Dr. Herman I. Frank and examine Douglas Buturla. I am attempting to obtain Dr. David M. Bosworth or Dr. Henry T. Briggan for the hearing but have to know the exact date of the hearing. I cannot arrange alternative dates with doctors.

I have no objections to the exhibits.

Respectfully yours,

MORTON M. BERGER

MMB:hpr

26 Federal Plaza, Room 3133  
New York, New York 10007

Tel. No. 264-3815

September 7, 1973

Morton M. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Buturla  
A/N 140-32-5420

Dear Mr. Berger:

Enclosed herein are copies of documents I propose to receive in evidence at the supplemental hearing to be held in this case absent any valid objections from you. They have been marked for identification as follows:

| <u>Exhibit</u> | <u>Description</u>  | <u>No. of Pages</u> |
|----------------|---|---------------------|
| <u>No.</u>     |   |                     |
| 27             | Medical reports by Henry Briggin, M.D., of examinations done on 1-11-71, 6-7-71, 10-14-71 and 4-10-72 as well as a letter dated 4-13-72 | 5                   |
| 28             | Medical reports by David H. Bosworth, M.D., of examinations done on 5-11-72 and 5-16-72 with x-ray reports attached                     | 4                   |
| 29             | Letter from New York City Police Department, dated 5-1-73   | 1                   |
| 30             | Medical report by Herman I. Frank, M.D., dated 8-28-73  | 2                   |
| 31             | Professional qualifications Herman I. Frank, M.D.   | 1                   |

Morton M. Berger, Esq.

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September 7, 1973

If you intend to offer any documents in evidence, please forward them to me as soon as they are available to you. Also, let me know no later than September 17, 1973 what witness(es) you expect to call. I will attempt to schedule their appearances so that we need wait more than a few minutes before testifying.

For your information, I propose to call but one witness - a vocational expert. I also plan to question Mr. Buturla. I do not intend to have Dr. Herman I. Frank appear in connection with his report. However, if you want to examine him, please let me know by September 17. If I do not hear from you, I will assume that you do not desire to examine Dr. Frank.

Also, by September 17, 1973 submit a list of the days you and your witness (es) could appear at a hearing. Your list should cover a period of 28 days.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

Enclosures

MORTON M. BERGER  
COUNSELOR AT LAW  
555 FIFTH AVENUE  
NEW YORK, N.Y. 10017  
TEL 986-8430

May 18, 1973

Judge Samuel C. Berson  
Department of Health, Education  
and Welfare  
26 Federal Plaza  
New York, N.Y. 10007

Re: Buturla, Douglas J.  
A/N: 14u-32-5420

Dear Judge Berson:

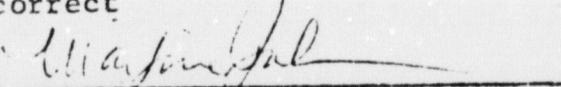
In accordance with our telephone conversation of this date, this is to confirm that the date of Dr. Henry Briggin's letter dated April 13, 1973 was inadvertently changed without my knowledge by my secretary. The correct date of the letter was April 13, 1972. Enclosed is a copy of a letter from Dr. Briggin's office showing that my secretary, Miss Johnson, had called their office and they incorrectly had advised her that the date should be changed to April 13, 1973. Miss Johnson had also inadvertently, without my knowledge, change the date in my letter from April 13, 1972 to April 13, 1973. Enclosed is a photostatic copy of my copy of the letter dated May 15, 1973.

Very truly yours,

  
MORTON M. BERGER

MMB:mj  
Encls.

I have read the above and it is  
correct



HENRY DRIGGIN, M.D., F.A.C.S.  
29 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301  
GIBRALTAR 7-3300

May 17, 1973

Morton Berger, Esq.  
555 Fifth Ave.  
New York, N.Y. 10017

Re: Douglas J. Buturla  
Inj: 12-10-69

Dear Mr. Berger:

Miss Johnson contacted our office as to the question of the date on our letter of April 13, 1972.

She was informed by me incorrectly that the date should be changed to April 13, 1973.

The correct date on the letter is April 13, 1972.

Very truly yours,

*Rosalind D. Koenig*

Rosalind D. Koenig

rdk

136

26 Federal Plaza, Room 3138  
New York, New York 10007

Tel. No. 264-3815

May 16, 1973

Mr. Douglas Buturla  
97 Rockland Avenue  
Staten Island, New York 10306

Re: A/N 140-32-5420

Dear Mr. Buturla:

As you were advised by the Appeals Council on April 9, 1973, your case was remanded to me for further proceedings, including the holding of a hearing.

Pursuant to such remand, I consider it necessary to have you examined by an orthopedist at no expense to you. Your attorney is being informed of this.

You will hear from the New York State Bureau of Disability Determinations which will make the necessary arrangements for the examination. Please keep any appointment that is made for you.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

26 Federal Plaza, Room 3138  
New York, New York 10007

Tel. No. 264-3815

May 16, 1973

Morton M. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Buturla  
A/N 140-32-5420

Dear Mr. Berger:

Since writing to you on April 12, 1973, I have succeeded in obtaining additional medical reports from the New York City Police Department. In view of your letter of May 15, 1973 indicating that the only medical records you are endeavoring to obtain are from the same source, I am no longer waiting to arrange for the impartial orthopedic consultative examination of which I previously advised you.

I am requesting the New York State Bureau of Disability Determinations to make the necessary arrangements for the examination which will be done at no expense to Mr. Douglas Buturla who will be notified when the appointment for such examination is made.

I am informing Mr. Buturla of my plans, and a copy of my letter to him is enclosed.

When I receive the report of the orthopedic examination, I will send you copies of all documents I plan to receive in evidence at the supplementary hearing, absent any valid objections thereto.

With your letter of May 15, 1973, you enclosed a photocopy of a letter from Dr. Henry Brinigin to you. I note that you changed the year in the date from 1972 to 1973. Please inform me why you did so.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

Enclosure

MORTON M. BERGER  
COUNSELOR AT LAW  
658 FIFTH AVENUE  
NEW YORK, N.Y. 10017  
TEL 986-0430

May 15, 1973

Department of Health, Education  
and Welfare  
26 Federal Plaza  
New York, N.Y. 10007

Attention: Judge Samuel C. Berson

Re: Burturla, Douglas J.  
A/N: 140-32-5420

Dear Judge Berson:

Douglas Burturla has been retired from the New York City Police Department on three quarters pay due to his injuries. I am endeavoring to obtain these police medical records, which is taking time to obtain. Enclosed please find copy of report from Dr. Henry Briggin, dated April 13, 1973.

Very truly yours,

MORTON M. BERGER

MMB:mj  
Enc.

HENRY BRIGGIN, M.D., F.A.C.S.  
25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301  
GIBRALTAR 7-3388

April 13, 1972

Morton Berger, Esq.  
555 Fifth Avenue  
New York, New York

Re: Douglas J. Buturla  
Inj: 12-10-69

Dear Mr. Berger:

The above patient has been under my care from 12-10-69 to the present date for a herniated disc.

The patient wishes to defer surgery for the present. He has not completely responded to conservative treatment and is awaiting further re-evaluation.

Very truly yours,

Henry Brigglin, M.D.

HB:rdk

**140**

Tel. No. 264-3815

26 Federal Plaza, Room 3138  
New York, New York 10007

May 9, 1973

Norton M. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Euturla  
140-32-5420

Dear Mr. Berger:

You have failed to reply to my letters of April 12, 1973 and May 1, 1973. Unless I hear from you by May 16, 1973, I shall assume that you do not desire to submit any medical reports to be transmitted to the orthopedist who will perform the examination mentioned in my earlier letter, and I shall request such examination on that day.

Very truly yours,

Samuel C. Eerson  
Administrative Law Judge

cc: Mr. Douglas Euturla

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

REFER TO

Tel. No. 264-3815

BU 601  
ROUTING/FILE NUMBER26 Federal Plaza, Room 313d  
New York, New York 10007

May 1, 1973

Morton M. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Buturla  
A/N 140-32-5420

Dear Mr. Berger:

I have not had a reply to my April 12, 1973 letter requesting up-to-date medical information. Kindly let me know what action you have taken in response to my request. I trust that I will hear from you by return mail.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

cc: Douglas Buturla

Tel. No. 264-3815

26 Federal Plaza, Room 3138  
New York, New York 10007

April 12, 1973

Morton H. Berger, Esq.  
555 Fifth Avenue  
New York, New York 10017

Re: Douglas Buturla  
A/N 140-32-5420

Dear Mr. Berger:

On April 9, 1973 you were informed that the Appeals Council remanded Mr. Douglas Buturla's case to me for further proceedings in conformance with the January 23, 1973 order issued by Judge George Rosling of the United States District Court for the Eastern District of New York.

Pursuant to such order, I intend requesting the New York State Bureau of Disability Determinations to arrange for an impartial orthopedic consultative examination at no expense to Mr. Buturla. Before I do so, however, I would like to have up-to-date medical information concerning Mr. Buturla's condition. Would you kindly obtain from Dr. Henry Briggan a complete report of his findings and the results of all x-rays taken and tests made since April 23, 1970, and submit such report to me. If any other physician treated Mr. Buturla for his impairment, kindly follow the same procedure. Insofar as reports of examinations done at the request of the New York City Police Department are concerned, I am requesting those directly.

Your cooperation with respect to the above request will help expedite final disposition of this matter.

Very truly yours,

Samuel C. Eerson  
Administrative Law Judge



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
P.O. BOX 2518, WASHINGTON, D.C. 20013

BUREAU OF  
HEARINGS AND APPEALS

REFER TO

H.P.  
140-32-5420

APR 5 1973  
100-7

Mr. Norton H. Berger  
Attorney at Law  
605 Fifth Avenue  
New York, New York 10017

Dear Mr. Berger:

Re: Mr. Douglas J. Buturla, 97 Rockland Avenue,  
Staten Island, New York 10306

This office is in receipt of the order of January 23, 1973, issued by Judge Fosling, of the United States District Court for the Eastern District of New York, remanding this case to the Secretary of Health, Education, and Welfare for further administrative action.

Enclosed is a copy of an order of the Appeals Council remanding the case to Samuel C. Person, an administrative law judge, formerly "hearing examiner," for further proceedings. He will be in further communication with you.

Sincerely yours,

H. Dale Cook  
Chairman, Appeals Council

Enclosure

cc: Mr. Douglas J. Buturla

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL  
REMANDING COURT CASE TO ADMINISTRATIVE LAW JUDGE

In case of

Douglas J. Buturla  
(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and  
Disability Insurance Benefits

140-32-5420

(Social Security Number)

The United States District Court has remanded this case to the Secretary of Health, Education, and Welfare for further administrative action. The Appeals Council hereby vacates its denial of the claimant's request for review and remands this case to an administrative law judge of the Bureau of Hearings and Appeals for further proceedings, including holding a hearing at which a vocational expert shall testify.

On remand, the claimant shall be provided adequate opportunity to comment on any additional evidence, to submit material evidence, to raise pertinent objections, to examine and cross-examine witnesses, and to propose findings of fact and conclusions of law. Upon completion thereof, the case shall be returned with a recommended decision to the Appeals Council for its decision. A copy of the recommended decision shall be sent to the claimant.

The claimant will be given the opportunity to file with the Appeals Council, within 10 days from the date of the recommended decision, briefs or other written statements of exceptions and comments as to applicable facts and law. After the 10-day period has expired, the Appeals Council will review the record and issue its decision.

APPEALS COUNCIL

Irwin A. Friedenberg  
Irwin A. Friedenberg, Member

John T. Allen  
John T. Allen, Member

Date: APR 9 1973

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

TRANSCRIPT

In the case of

Douglas Buturla  
(Claimant)

(Wage Earner) (Leave blank if same as above.)

Claim for

Period of Disability and  
Disability Insurance Benefits

140-32-5420

(Social Security Number)

Hearing Held

at

26 Federal Plaza, New York, New York

on

October 24, 1973

APPEARANCES:

Douglas Buturla, Claimant  
Morton M. Berger, Attorney  
Herman I. Frank, M.D., Witness  
Sidney A. Fishman, Ph.D., Vocational Expert

Samuel C. Berson  
XXXXXX  
Administrative Law Judge

Helen Harris  
Hearing Assistant

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In the case of

Account Number

Douglas Buturia

140-32-5420

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| Testimony of Douglas Buturia.....         | Commencing on p. 41  |
| Testimony of Sidney A. Fishman, Ph.D..... | Commencing on p. 71  |
| Oral Argument of Morton M. Berger.....    | Commencing on p. 117 |

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(The following is a transcript of the hearing held before Samuel C. Berson, an Administrative Law Judge of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, on October 24, 1973 at New York, New York, in the case of Douglas Buturla, Claimant in his own behalf and based on his own earnings record, social security account number 140-32-5420. The claimant, Douglas Buturla, appeared in person and was represented by his attorney, Morton M. Berger, Esq. Also present was Herman I. Frank, M.D. as well as a vocational expert, Sidney A. Fishman, Ph.D.)

(The hearing commenced at 1:35 p.m. on October 24, 1973)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

We are ready to proceed with the hearing in the matter of Douglas Buturla, claimant for disability benefits based on his own earnings record, social security account number 140-32-5420. Let the record show that the claimant, Mr. Douglas Buturla; his attorney, Mr. Morton M. Berger; a vocational expert, Sidney A. Fishman, and a physician, Dr. Herman I. Frank are present.

Mr. Buturla, the procedure at this hearing will be substantially the same as at the hearing held on May 24, 1971. You do recall that hearing?

MR. BUTURLA: Yes.

ADMINISTRATIVE LAW JUDGE: Subsequent to that hearing, the hearing examiner issued a decision in which he held that you were not entitled to the disability benefits for which you applied and the Appeals Council affirmed that

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you were not entitled to the disability benefits for which you applied and the Appeals Council affirmed that decision after you requested the Council to review it. You then commenced an action in the United States District Court for the Eastern District of New York and the Court remanded the case to the Social Security Administration for further administrative action. Today's hearing was scheduled after the Appeals Council remanded the case to me to carry out the mandate of the Court.

Now, Mr. Berger, I gather that you received copies of exhibits 1 to 26, inclusive, which were received in evidence on May 24, 1971. Is that correct, sir?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: And on September 7, 1973, I sent you proposed exhibits 27 to 31, inclusive.

MR. BERGER: Correct.

ADMINISTRATIVE LAW JUDGE: And on June 18 you sent me a report from Dr. Henry Briggin which is marked for identification as exhibit no. 32. That's correct, sir, isn't it?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: And on September 14, I

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mailed to you copies of documents which are marked for identification as exhibits 33 and 34.

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: And this morning you were given a copy of proposed exhibit 35.

MR. BERGER: True.

ADMINISTRATIVE LAW JUDGE: Do you have any objection, Mr. Berger, to the admission of any of these documents marked for identification as exhibits 27 to 35, inclusive, into the record?

MR. BERGER: You haven't included the exhibit of Dr. Briggin that I had sent you.

ADMINISTRATIVE LAW JUDGE: That, I marked as exhibit 32, sir.

MR. BERGER: Oh, it is marked as 32?

ADMINISTRATIVE LAW JUDGE: Yes.

MR. BERGER: I would like to ---

ADMINISTRATIVE LAW JUDGE: That's the report dated June 18, 1973. Right?

MR. BERGER: Hmm.

ADMINISTRATIVE LAW JUDGE: I show it to you.

MR. BERGER: Right, right. Thank you.

ADMINISTRATIVE LAW JUDGE: Now will you answer my question whether you have any objections.

MR. BERGER: No.

ADMINISTRATIVE LAW JUDGE: In the absence of any objections, the documents just referred to will be received in evidence as exhibits 27 to 35, inclusive.

MR. BERGER: Except that I reserve the right to have a doctor here under the proper circumstances. In view of the fact that I had extenuating circumstances and couldn't get the doctors to come here, I reserve the right to a further hearing with respect to that doctor who will eventually be here.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I don't want to take the time at this moment in this hearing to discuss that aspect because I'd like to take the testimony of Dr. Frank and let him go on his way.

MR. BERGER: All right.

ADMINISTRATIVE LAW JUDGE: I will hear you later on. Now, I assume, we'll call Dr. Frank as the first witness.

MR. BERGER: All right.

ADMINISTRATIVE LAW JUDGE: Dr. Frank, your presence here was requested by Mr. Berger who is the attorney for

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Mr. Buturla, the claimant here. You examined Mr. Buturla on August 16, 1973 according to a report of yours which is in evidence as exhibit no. 30. After a few questions from me, I will permit Mr. Berger to question you and then I will have some questions for you later on. Do you understand, sir?

DR. FRANK: Yes.

ADMINISTRATIVE LAW JUDGE: Will you please rise to take the oath?

The witness, DR. HERMAN I. FRANK, having been first duly sworn, testified as follows:

EXAMINATION BY ADMINISTRATIVE LAW JUDGE:

Q Will you state your name for the record.

A My name is Herman I. Frank.

Q And your address, sir.

A My home address is 911 Avenue C in Bayonne, New Jersey, and the office address where I examined Mr. Buturla is 307 Victory Blvd. in Staten Island, New York.

Q I show you a document which, as I mentioned, was received in evidence as exhibit no. 30. It is on the letterhead of the Staten Island Medical Group and it is dated August 28, 1973. Was this prepared and signed by you?

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A Yes.

Q I show you a document which has been received in evidence as exhibit no. 31. It purports to be the professional qualifications of one Herman Frank. Is the information on there correct?

A Yes, sir.

Q Is there anything you would like to add to your professional qualifications?

A No, sir.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, would you accept Dr. Frank as a specialist in orthopedic surgery?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: Thank you, sir. All right, Mr. Berger, you may question Dr. Frank.

EXAMINATION BY ATTORNEY:

Q With respect to your qualifications, Doctor, an orthopedist is different from an orthopedic surgeon?

A We're considered the same. The actual board is called the American Board of Orthopaedic Surgery and an orthopedist is just a short term for an orthopedic surgeon.

Q Well, do you make diagnoses as frequently as an orthopedist does?

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A I know of no distinction between the two terms, sir.

Q Well, there is a medical distinction, is there not?

A You may have one but I know of none.

Q I ask that that be stricken as not responsive. Is there not a medical distinction by the AMA between an orthopedist and one who is qualified as an orthopedic surgeon?

A I know of none, myself.

Q Are there different examinations?

A No, sir. I told you the board is the American Board of Orthopaedic Surgery. There is no Board of American Orthopaedics. This is not like neurology and neurologic surgery which may be taken as an analogy, but there is only orthopedic surgery.

Q Doctor, can an orthopedist be an orthopedic surgeon?

A As I said the two are synonymous in my mind. If you have a dictionary definition which is different, I'd be glad to hear it but I know of no distinction between the two.

Q You mean any orthopedist can perform surgery.

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A Any orthopedist who is qualified by the American Board of Orthopaedic Surgery is qualified to perform surgery.

Q Well to be qualified as an orthopedic surgeon, do you first have to be an orthopedist so he understand ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I think ---

DR. FRANK: I said ---

ADMINISTRATIVE LAW JUDGE: Excuse me, Dr. Frank. Mr. Berger, I think it's more than three times - I think it's four or five times that Dr. Frank said there's no difference that he knows of.

BY ATTORNEY:

Q Doctor, you're not a psychiatrist, are you?

A No, sir.

Q Nor a neurologist?

A No, sir.

Q When you said "considerable psychogenic overlay and hysterical anesthesia of the right leg" - with respect to psychogenic overlay in your report of August 28th, 1973, weren't you speculating?

A No, sir, I was - well, I was giving my objective interpretation of the objective findings that I made on

-9-

examination.

Q You didn't consult a psychiatrist or neurologist, did you?

A No, sir.

Q Doctor, what did you examine him for on August 28th?

A I'd like you to make that more clear as to what I examined.

Q What's that?

A I mean I don't understand that question, sir.

Q Well, you're the doctor.

A You mean what purpose did I have in examining him?

Q Yes.

A To find out his complaints and make an objective examination as to what I found.

Q But didn't you have diagnoses of what he had before you examined him?

A I had records of other doctors' examinations.

Q Well what did you examine? What did you examine him for? What was the diagnosis you were checking?

A I don't examine for a diagnosis. I examine to

-10-

determine a diagnosis. I restrict myself, more or less, to the limbs and I don't examine the hearing or other things unless there is a specific reason for it. But I did an orthopedic examination which was centered on the back and the legs.

Q Are you saying, Doctor, that it is not necessary for you to have the reports of other doctors and hospitals?

A I certainly say it helps me and I looked at those reports, yes, sir.

Q And you considered the diagnosis?

A Yes, sir.

Q And did you know what diagnosis you considered? Do you have any independent recollection?

A I have a recollection that he was seen by several doctors; that, originally, there was some complaints of chest injury but that x-rays of the chest were negative and that his complaints there subsided; that he had complaints as regards his hip and back. and that the diagnosis of back derangement with possible disc injury was made. X-rays were taken - one or two of them were read to show, toward the end, slight narrowing of the L4-L5 interspace. I had records of the interpretations of those

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x-rays but I didn't see the x-rays personally, and an electromyogram was made on one occasion. I don't know the exact results but they were not dramatic, as I remember.

Q But didn't you see any diagnosis of herniated disc?

A I said that there was evidence of low back derangement with disc injury.

Q Which means you saw evidence of herniated disc?

A I saw evidence that a doctor suspected this, yes.

Q And where was it located, Doctor?

A I don't remember where the doctor said it was located but I do remember that one doctor reported narrowing between L4 and L5 interspace and some x-rays which lead me to suspect ---

Q Would that have some significance to you - the narrowing?

A Yes. It could mean that some disc material had been extruded at that space.

Q And especially since -- Do you know the date? If I refresh your recollection? It was May the 11th and May the 16th, 1972, of those x-rays.

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A All I know is that the original x-rays were reported as negative and later subsequent ones had shown that ---

Q And didn't that have any significance for you, Doctor?

A Yes.

Q What is the significance?

A I said already that some disc material had been extruded. From which space --

Q And what does that mean? The extrusion of disc material?

A It means extrusion of disc material.

Q Well, what diagnosis would that lead to?

A It would lead to a diagnosis of injury to the disc at that level.

Q What injury, Doctor?

A What you call "herniation" would be one term for it.

Q All right. Did you make any prognosis about his disability, Doctor, or incapacity for work?

A No, I didn't make any estimation of this. I'd been instructed that this was a matter for the people who

review my record to make on the basis of my objective findings to them.

Q Do you understand that he got a 3/4s discharge from the Police Department in June of 1972 on the basis of total disability?

A I understand that.

Q And would you go along with that finding?

A That he was not able to perform his duties as a policeman?

Q Right.

A Yes, sir.

Q And subsequent to 1972 of June, would you go along with the fact that he's partially disabled to the present time?

A Yes. --

Q I have no further questions.

ADMINISTRATIVE LAW JUDGE: Dr. Frank, as I indicated previously, I have a number of questions for you but I won't be as brief as Mr. Berger, unfortunately.

EXAMINATION BY ADMINISTRATIVE LAW JUDGE:

Q In your report, Doctor, you state that Mr. Buturla stood on one leg with good stability. Was that each leg

at a time?

A Yes, each successively.

Q What was the purpose of this procedure?

A To decide if there was any problem with his hip and also because he had been complaining of pain in his hip. A person who has hip difficulty often cannot stand on one leg without shaking - the so-called Trendelenburg sign. And also to judge the strength of the musculature of his back and legs.

Q What did you mean when you said there was a slight flattening of the normal lumbarlordosis?

A As a person stands, ordinarily there is a gentle curve outward in the dorsal region and inward in the lumbar region to form an S curve. When the back muscles are in some spasm, that curve can become smaller and can become somewhat flattened.

Q Does the flattening in this instance interfere with body movements?

A It can. The flattening doesn't interfere. The spasm that causes it can interfere with body movements.

Q You tested the ranges of motion of the back and you recorded your findings in your report.

A Yes.

Q Did Mr. Buturla stand when you were testing him?

A Yes.

Q To what extent, if any, do the ranges of motion reported by you interfere with body movements.

A Well the ranges as reported by me interfere considerably. But I also said that I felt that the ranges I obtained were not true ranges and represented some voluntary restriction on his part from fear or from other purposes. I don't think there was any purpose to deceive me but I think that he was tense and frightened. And I gave as an example that he was able to remove his trousers while standing which involved much more motion of the back during that particular procedure than he actually produced when I asked him to make specific motions.

Q In what position did you place Mr. Buturla for the straight leg raising test?

A He was recumbent on the table in a supine position and his face up.

Q Doctor, I'm interested in the angle that orthopedists report. Is it the one made by the lower extremity

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in relation to the table?

A My report represents the angle of motion obtained from the table. In other words, zero would be no motion,  $10^{\circ}$  would be a ten-degree angle with the table and so on up to  $90^{\circ}$ .

Q Would you consider  $90^{\circ}$  normal?

A  $90^{\circ}$  would be very good; somewhat less than that would still be considered normal.

Q Now, in what way, if any, do the limitations of straight leg raising reported by you affect Mr. Buturlais ability to function?

A I don't think they would have, in themselves, any affect on it. They are signs of either muscle spasm or irritation of the sciatic nerve and these things might affect the ability to function, although it would depend on the individual case.

Q Doctor, in one of your findings you use the symbol "+ sign."

A I garbled it with those reflexes. Two plusses would be considered normal. What I should say is that the left knee jerk, the right knee jerk and the left ankle jerk were of normal amplitude and the right ankle jerk

was obtained but was of less than normal amplitude. That would be a more realistic assessment of my findings.

Q Well, you say 2+ is normal.

A Yes.

Q I'm going to refer you to other reports in evidence where the orthopedist indicates more than two plusses. Would you be able to give us an idea what he probably meant?

A I think each person has his own idea and this is why it's probably a bad terminology, and I think normal amplitude would be a better one. Normal amplitude was what I meant by 2+ and he may mean something else by it.

Q And you would be unable to tell us what he meant.

A No.

Q Now does the diminished right ankle jerk affect Mr. Buturla's ability to function?

A Again, it is a sign of probable irritation of the lumbar nerve on the right side or so-called right sciatica. It could, depending on the individual circumstances, affect it although I've seen many patients with completely absent ankle jerks functioning completely.

Q You report the lack of noticeable edema in con-

reaction with the circumference measurements of the thighs and calves. What is the significance of this?

A With the patient having symptoms on the right side, I was looking for and expecting possible atrophy on the right side. That is, the pliant circumferences on the right side would be smaller than on the left. Instead, I find them larger. The question then came up in my mind, is this the result of any swelling or edema. I found no evidence of swelling; I just found the right side larger. The amount I found it larger was only a  $\frac{1}{4}$  of an inch which would possibly be within normal variation but it certainly indicated that there was no atrophy on the right side.

Q And no atrophy on the left either?

A Well, there was a difference of  $\frac{1}{4}$  inch, with the left  $\frac{1}{4}$  inch slighter than the right, but there was certainly nothing to suggest atrophy on the right side where he was complaining of his symptoms.

Q One of the diagnoses submitted by the claimant's orthopedist is "nerve root pressure, low lumbar on right." Now if that --- As I understand it, nerve root pressure may produce atrophy. Am I correct?

A It can, yes.

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Q Now, would that diagnosis produce atrophy on the right or on the left?

A It would produce it on the right.

Q In your diagnosis no. 2, you mention right lumbar neuropathy. Does that mean that there was nerve root pressure at the time of your examination?

A It meant that I had reason to think that there was some nerve root pressure present. It would correspond with more or less what you are asking me about. The other doctor has low lumbar nerve root compression.

Q Well, how would that nerve root pressure which was present interfere with bodily function?

A Of itself, it might cause little or no impairment or a great deal. I didn't feel that this particular amount was causing any serious interference in this case.

Q You mention that Mr. Buturla had hypesthesia of the entire right leg. Does that interfere with his ability to function?

A Subjectively, it may, by causing him fear or anxiety. I don't think it would cause any actual objective inability to perform certain tasks.

Q Would it prevent him from walking?

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A No, sir.

Q Would that hypesthesia be a permanent condition which is always present?

A I felt the hypesthesia was on the basis of hysteria. As long as there is hysteria present, it will be present. but I felt there was no organic basis for it and that it did not correspond to any segmental nerve distribution or any distribution of a peripheral nerve. It's almost impossible to get complete anesthesia of an extremity on the basis of local conditions, a localized condition.

Q Did you find any evidence of a herniated disc?

A A herniated disc is found only by implication ---

Q Excuse me, Doctor. Yes, Mr. Berger.

MR. BERGER: I'm making an objection. I ask an exception. Go ahead.

A Short of actual myelography or surgery, herniated discs are found only by implication on diagnosis. I found some evidence of lumbar neuropathy or what you might call sciatica, and 95% of the time the cause of this is pressure or previous pressure of a herniated disc. To that extent, by implication, I felt there could have been some disc herniation in the past. There was also a history of

a doctor having found a narrowing in one interspace which the attorney mentioned. The x-rays which were submitted to me didn't show that. They were of poor technical quality but I would be willing to accept the fact that another doctor had found that narrowing.

MR. BERGER: I want to make a correction. I did not submit any x-rays.

ADMINISTRATIVE LAW JUDGE: He didn't say you did.

DOCTOR FRANK: No, you mentioned to me about the x-rays in your questioning.

MR. BERGER: But you had mentioned ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger, let's get this straight. The x-rays ---

MR. BERGER: That's the whole idea. I want to get this straight. I'm going to go on record ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger, Mr. Berger --- I beg your pardon?

MR. BERGER: He's probably talking about Dr. Haboush's x-rays.

ADMINISTRATIVE LAW JUDGE: I was going to make that clear for the record, sir. That's what he was saying.

MR. BERGER: I think we should make it clear.

ADMINISTRATIVE LAW JUDGE: It is clear. It's clear he was talking about those x-rays because the date ---

MR. BERGER: I did not give them to him.

ADMINISTRATIVE LAW JUDGE: I don't know that he said that you did.

MR. BERGER: Well it was my understanding that's what he said.

DR. FRANK: I said that ---

ADMINISTRATIVE LAW JUDGE: Dr. Frank, Dr. Frank, please let's not extend this too much. You are satisfied, Mr. Berger, that the record is clear that the x-rays were taken by another orthopedist?

MR. BERGER: No. (addressing the witness) I also want to know now as a matter of voir dire where you got the x-rays from? Who gave them to you?

DR. FRANK: The Social Security did, sir.

MR. BERGER: Now, when you mentioned "attorney" you meant an attorney from Social Security gave them to you?

DR. FRANK: No, I said the x-rays I had seen were technically poor but the x-rays you had questioned about showed --- were purported to have shown narrowing. That's what my statement was.

MR. BERGER: But the x-rays you had seen ---

DR. FRANK: Were not the ones that showed the narrowing and were not the ones submitted by anyone but the Social Security Department.

MR. BERGER: They were Dr. Haboush's x-rays?

DR. FRANK: Yes, sir.

ADMINISTRATIVE LAW JUDGE: May I continue, Mr. Berger?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: Thank you.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Frank, based on your examination, I would like to have your opinion as to the extent of Mr. Buturla's limitations of various physical activities. How about his ability to stand?

MR. BERGER: Note my objections, but you may answer.

A The question is very difficult to answer, your Honor, because it brings up questions between psychic and physical. To say that a man has psychic impairment doesn't mean that he has no impairment. I find that the actual orthopedic conditions produce little impairment of his ability to stand, walk or such, but I would not for one minute say that he has no impairment on the basis of the

diagnosis I made of hysteria and psychogenic overlay.

Q Dr. Frank, for the purpose of the questions with respect to physical activity limitations, I want you to consider only your orthopedic findings. Okay, sir?

A All right, sir.

Q And I will ask you each one individually and not encompass them with your words "or such" as you just mentioned. His ability to stand?

A The actual orthopedic finding shows no impairment to that ability.

Q To sit?

A No impairment.

Q Bend his trunk?

A I would say slight impairment.

Q Walk?

A Moderate distances up to 10 blocks with no impairment.

Q Carry?

A I would say carry weights up to 25 lbs. with no difficulty.

Q Push? What kind of a force?

A Approximately the same force - about 25 lbs.

Q And pull? The same?

A Yes, sir.

Q And lifting would be the same?

A Yes, sir.

Q How about climbing stairs?

A I would say that one flight could be accomplished fairly frequently without difficulty.

Q Use public transportation?

A Yes.

Q How about driving a vehicle?

A I have no idea. This would depend not only on physical things but on confidence and I would not want to put him in a position unless I felt he was confident he could do it himself.

Q Would any of your answers be different if it's established that Mr. Buturla actually has a herniated disc?

A I have no objection to that statement. I more or less included it in my diagnosis when I said right lumbar neuropathy, but I also stated in my statement that there are hundreds of people walking around with herniated discs doing full duty.

Q You didn't say that, sir. You didn't mention

the words "herniated disc" in yo... last paragraph.

A Well, I'm sorry, but it was this degree of impairment and I implied that it was herniated disc.

Q So I gather, then, that your answers would be the same.

A That's right.

Q I'm going to ask you to define a term which you might use in answer to my next questions. Based on your examination and from the orthopedic standpoint only, I would like to have your opinion as to Mr. Buturla's physical capacity to perform either sedentary or light or medium or strenuous activity on a sustained basis.

A Well, is sedentary separate from light?

Q Well, to me, it is and I'm pretty sure to Dr. Fishman, who is a vocational expert, it is. If you don't know any distinction --- Because I'm going to ask you to define whatever term you use in answer to that question, ---

A I certainly ---

MR. BERGER: I ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger?

MR. BERGER: Your answer - you may ANSWER, but note my objection to the question that has been asked and

answered. Go ahead, Doctor.

A He certainly is capable of sedentary activity. I would also feel that he is capable of light activity which is in addition to sedentary duties.

Q Would you define those two terms as you understand them?

A Sedentary activity, in my mind, would be a job which involves being in a sitting position at a desk or elsewhere for a majority of the time with occasional walking but no heavy labor. Light physical activity, which I believe is your next category, would involve activities not in a sedentary and in a standing or walking posture with forces up to the amounts that I specified before involved in the problems of pushing or pulling and lifting.

Q Thank you, sir. In the last paragraph of your report, as you mentioned a few minutes ago, you state that many people work full time even though they have no less the degree of impairment that you found Mr. Buturla has, and I gather also that that is true even though it may be established that he has a herniated disc.

A Yes, sir.

Q Based on your expertise and your examination of Mr. Buturla, from an orthopedic standpoint, would you say that a return to some type of employment would be medically desirable or undesirable?

A I think it would be very desirable medically.

Q Now, Doctor, I show you a discharge summary of a period of hospitalization in June and July 1970 which is in evidence as exhibit no. 20. Please refer to the findings on examination. As of that time and based on the findings reported, could you tell us whether any of Mr. Buturla's physical activities were more or less restricted than on the day of your examination of him?

MR. BERGER: I'm going to object to that. It's highly speculative. He didn't make the examination of this patient on that date.

ADMINISTRATIVE LAW JUDGE: That's true, Mr. Berger, but the examination is reported in exhibit 20.

MR. BERGER: No. This is beyond the realm of realistic hard evidence and it's stretching credulity too far and afield.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, your objection is on the record. If I've made an error in basing my

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decision on anything Dr. Frank testifies with respect to this line of questioning, you are well protected.

MR. BERGER: I want to interject here on voir dire.

ADMINISTRATIVE LAW JUDGE: Excuse me, sir, you had voir dire once or twice before.

MR. BERGER: I want to know if he understands from this report if he can come to this conclusion.

ADMINISTRATIVE LAW JUDGE: Well, he'll tell me if he can.

MR. BERGER: All right.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Frank, did you understand my question?

A I understand the question. I can give a partial answer but not a complete one.

MR. BERGER: I renew my objection.

ADMINISTRATIVE LAW JUDGE: Your objection is overruled with the same observation as previously.

MR. BERGER: Exception.

ADMINISTRATIVE LAW JUDGE: Yes. You have an exception for every objection, sir, every ruling that I may make.

BY ADMINISTRATIVE LAW JUDGE

Q All right, Dr. Frank.

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A As far as the range of motion, and such, I can-not prepare with any degree of satisfaction ---

Q Excuse me, Dr. Frank, that isn't what I meant by my question. I'm sorry I didn't communicate properly. I asked you with respect to certain physical activities previously - standing, sitting, pulling, pushing -, and I have that in mind when I ask you whether, based on the findings in 1970, could Mr. Buturla have done as much in the line of those activities as you mentioned he could based on your examination, or less?

A I couldn't give you any answer, your Honor.

Q All right. I refer you to an examination which took place on January 18, 1971 and it's the report in exhibit 24.

A Exhibit 27, is that?

Q 24, sir. And the date is January 18, '71. Now Dr. Bosworth mentioned LaSegue. Can you tell us what LaSegue means?

A I think this corresponds to my straight leg raising. It's the name of the man who described it, I believe, and a '71 LaSegue would mean that there was considerable restriction of straight leg raising on the

on the right and 1+ Lasegue would mean there was mild restriction of straight leg raising of the left.

Q Now, Dr. Bosworth also mentioned some weakness in dorsiflexion of the right hallux. The right hallux is the great right toe, is it not?

A Yes, sir.

Q And would this weakness interfere with Mr. Buturla's ability to function?

A Not particularly. It's more important as a sign of possible damage of one of the nerve roots and pressure on the nerve root, but it would not interfere with the activities.

MR. BERGER: I'm going to object to this.

ADMINISTRATIVE LAW JUDGE: I beg your pardon, sir.

MR. BERGER: Any one --- You're asking singly when it's a cumulative affect of all - not just any one.

ADMINISTRATIVE LAW JUDGE: Well, you're privileged to ask Dr. Frank your question.

MR. BERGER: Your question is very self-serving and leads the doctor into erroneous conclusions.

ADMINISTRATIVE LAW JUDGE: I don't understand your term "self-serving." My function here is to carry out the mandate of the court and gather the evidence, and I will

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be required by the remand order of the Appeals Council to issue a recommended decision. I have no purpose to serve other than that.

MR. BERGER: The record of Dr. Bosworth speaks for itself, in any event. So far as any interpretations of his record, he should be here. You should have subpoenaed Dr. Bosworth.

ADMINISTRATIVE LAW JUDGE: I don't recall any motion or application to subpoena anybody on your behalf, sir.

MR. BERGER: You're here, as you say, as a judicial body to see that truth is taken into account. Then, you should have had Dr. Bosworth here.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I know you are a competent attorney. Dr. Bosworth is an orthopedist who examined Mr. Buturla at Mr. Buturla's desire or wishes. I asked you originally in a letter whom you want to examine. If you had made known that you couldn't get Dr. Bosworth to appear, absent a subpoena, I would have considered that request.

MR. BERGER: I called you yesterday.

ADMINISTRATIVE LAW JUDGE: Much too late to issue any kind of subpoena for today's hearing. Mr. Hartley, please

let me continue.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Frank. In that January 18, 1971 report, Dr. Bosworth submits a diagnosis of a lacerated lumbar 4 disc. Can you tell me what he means by laceration?

MR. BERGER: Not what he means, what the term means.

A The term, laceration, means a tear. I would assume he means that the portion of the disc which forms the outer border was torn with resulting extrusion of material from the inside. This is something that he uses just as a term. To my mind, there would be no difference between this and herniated disc and that sort. He may have just dictated out of the moment, but to my mind it still means disc pathology at the level between L4 and L5.

Q Doctor, I want to now turn to the diagnosis of psychogenic overlay which you submitted and about which Mr. Berger questioned you. Can you tell me what you meant by that diagnosis?

A I meant that many of his symptoms were based on problems other than the actual physical impairment that he had. Result of a scary accident, ~~sustaining~~ many

doctors who gave him different opinions and were perhaps impersonal and made him feel that he was just a coo in a machine and the other factors that you interpose, the medical and judicial problems that exist to the point that he had developed symptoms and had impairments which were not on the basis of actual functional organic material including the disc herniation, which I felt he had on the basis of mental block, more or less, a psychiatric impairment.

Q Do I gather correctly, and tell me if I'm wrong, the basis of your diagnosis was the history and the complaints expressed by Mr. Buturla as compared to the objective findings you made?

A It was based on several things. A few of the symptoms seemed rather dramatically described and out of relation to organic roots of radiation. For instance, pain from the back to the shoulder which he mentioned. However, it was more marked on his degree of tension, the perspiration which I described which was quite marked in an air-conditioned room. and the finding of a degree of anesthesia which typically is described as based on so-called either "glove in the arm or stocking in the leg anesthesia"

and which is based not on any organic impairment but on conversion mechanisms and it was typically that. It involved everything from his toes to his leg.

Q Thank you.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, do you have questions for Dr. Frank?

MR. BERGER: Yes, I have a few.

EXAMINATION OF DR. FRANK BY ATTORNEY:

Q Doctor, as a result of a herniated disc, isn't there a fear by the patient of paralysis? The average patient?

A The patient has a fear, himself?

Q Yes.

A Possibly, if it is not explained to him properly what exactly this means and how it can be ---

Q And isn't there a fear of a laminectomy?

A Yes.

Q And isn't there a psychogenic overlay in all of these patients with a herniated disc?

A I wouldn't say with all of them but I would say that over a period of one or two years, at least half of them develop a degree of overlay. Not necessarily the

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conversion hysteria which was also present with him, but ---

Q But in many of those cases that have, there is still some conversion of hysteria associated.

A Well it depends on what you mean by "many." I wouldn't say 5%, 10%. I would say that 50% probably have some degree of anxiety.

Q It's a valid effect of a herniated disc.

A No, it's a valid effect of the process I talked about, of going to doctors who are impersonal, just putting in a day's work the way I sometimes do myself, of not having the individual attention in a department that you get with an individual doctor, but it happens even with individual doctors and it happens much more with companies, with Police Departments, with that sort of thing.

Q Well, whether it's still with other doctors or whatever, it is due to ---

A It's the process.

Q --- it's part and parcel of the whole, is it not?

A Well, it's a result of the original situation, yes.

Q All right. Now, so far as the flattening --- You didn't say it was a normal lordotic curve, did you, in the

back?

A I said it was slightly flattened which means that the curve was not normal.

Q Yes, from the spasms, is that correct, Doctor? And spasm is from the herniated disc or ---

A Spasm is from irritation of nerve roots. In this particular case the most likely cause, again not absolute, but 90-95% of the time is disc compression.

Q Now the fact that there's no atrophy on the limb, or even if there is an atrophy of the other limb, does that rule out that there's a disc, a herniated disc, or say that there is a disc?

A The presence of atrophy would certainly substantiate the diagnosis of root compression more. The absence of it certainly does not rule it out. Right.

Q And even the presence of it doesn't mean that there is herniated disc?

A I didn't say that it meant that. I said it tends to substantiate that there is a root compression on any basis.

Q Now, Mr. Honey mentioned about bending, walking, carrying, pushing, pulling, lifting, public transportation.

It appeared to me it was a one-shot deal. I'd like to ask you, Doctor, can he bend constantly?

A What would "constantly" consist of? How many times a minute or how many times an hour?

Q Let's say bends 20 times in 10 minutes and he has to keep on that routine.

A I think he could do it for a reasonable period of time.

Q What is a reasonable period of time?

A Well, you are saying two a minute. I think he could keep it up for 10 or 15 minutes. I don't think any individual could keep it up for hours at a time. When I was talking of light or moderate activity, I would say that he could do it for short periods of time - up to 10 or 15 minutes - but I wouldn't want him to go through an 8-hour day doing two bends a minute.

Q All right, thank you. Now what about carrying weights? Can he constantly carry weights?

A He's constantly carrying a good deal of weight already so the extra 25 lbs. would make very little difference.

Q What about more than 25 lbs.?

A I mentioned 25 as a safe limit for him.

Q Well, now, how frequently can he carry 25 lbs.?

A I would say he could carry constantly.

Q In one hand, both hands?

A Even on his head.

Q On his head, too. And there's no danger of a paralysis with respect to his disc?

A There's a danger of that while he's sleeping.

The possibility - the likelihood - that 25 lbs. is going to produce more damage to his disc than not carrying is, I think in my mind, very little.

Q Now, what about pushing and pulling? Can he continue this constantly in a day? Pushing and pulling?

A I would say there's very little impairment in his ability to do it.

Q All right. Doctor, can he bend, can he carry, can he push, can he pull in one day, constantly, continuously?

A As far as the actual orthopedic conditions are concerned, he could do far more than the limits I put on him. I gave very conservative limits.

Q Now, that is as of the time of your examination.

A Of course.

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Q But you can't - you're not speculating as to any time prior to your examination.

A I can see two doctors give examinations on the same day and come up with reasonable and proper differences of opinion. There can be differences in the same day. I cannot say a thing about what went on before in examinations.

Q Are there different schools of thought with respect to herniated discs as to what one person can do and what one person can't do - medically?

A I have no idea of schools of thought. I think on any topic of this though, with a hundred physicians you get a hundred different opinions.

Q All right. So that based on the same question, a hypothetical question of a man pushing, pulling, carrying weights and having to bend all during the day, other doctors would find that he couldn't do this?

A Other doctors would state that he couldn't do it, possibly. yes

Q I have no further questions.

ADMINISTRATIVE LAW JUDGE: Thank you, Dr. Frank. You may leave.

(At this point there was declared a short recess.)

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ADMINISTRATIVE LAW JUDGE: The hearing will be resumed.

Mr. Berger, I believe we ought to call Mr. Buturla as the next witness unless you have objection.

MR. BERGER: I have no objection.

ADMINISTRATIVE LAW JUDGE: Would you like me to question Mr. Buturla first?

MR. BERGER: No, I called him as a witness.

ADMINISTRATIVE LAW JUDGE: You want to question him first?

MR. BERGER: Yes, if you don't mind.

ADMINISTRATIVE LAW JUDGE: I don't mind at all.

Mr. Buturla, would you please rise.

The claimant, DOUGLAS BUTURLA, having been first duly sworn, testified as follows:

ADMINISTRATIVE LAW JUDGE: Would you state your name and address for the record.

MR. BUTURLA: Douglas Buturla. 33 Fraser Street, Staten Island, New York.

ADMINISTRATIVE LAW JUDGE: Very well, Mr. Berger.

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Mr. Buturla, were you involved in an automobile accident and, if so, would you tell us the date.

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A Yes, I was, 12-10-69.

Q And do you know the hour of the day?

A It was approximately 1:50 p.m.

Q And do you know where it occurred?

A Yes, on Goethals Road North, in Staten Island.

Q And what kind of vehicle were you in when the accident occurred?

A In a Police Department vehicle.

Q And was that in the vicinity of the bridge?

A Yes, it was adjacent to the Goethals bridge.

Q What occurred as your vehicle was going west on Goethals Road North?

A We were involved in a collision with a passenger car which struck us on the left side and drove us into a parked car on the right side.

Q And when you were struck on the right side, there was an initial impact?

A Yes, there was.

Q And you were pushed into the vehicle - the parked vehicle on your right? Was there more than one impact in addition to the first impact?

A Yes, there was actually -- I would -- two impacts.

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We hit him with our right front side and we went sliding into him.

Q You're talking about the parked vehicle?

A The parked vehicle, yes.

Q And what happened to you in the police car?

A I was sitting in my seat. The seat broke underneath me. It came off the track or the dolly, whatever it's called, and I was being tossed from my left to my right.

Q And were you wearing a seat belt at the time?

A Yes.

Q And was the seat belt - did it have any slack to it?

A None.

Q So that --- How far did the seat go or from the - what secured it to the floor?

ADMINISTRATIVE LAW JUDGE: Excuse me, Mr. Buturla, before you answer. Mr. Berger, personally, I see no point to this line of questioning. There's no doubt that Mr. Buturla was injured on that date in December 1969. The complete details of the injury are unnecessary for this purpose.

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MR. BERGER: Well, you're contesting the nature of the injury.

ADMINISTRATIVE LAW JUDGE: Who is?

MR. BERGER: So far as I have seen up to the present time, they are contesting the severity of the injury.

ADMINISTRATIVE LAW JUDGE: The prior determinations and the decision in this case are that despite the impairment that Mr. Buturla has, he still can do substantial gainful activity. No one has alleged and no one has found that he wasn't injured.

MR. BERGER: Well, they are questioning the severity of the injury--

ADMINISTRATIVE LAW JUDGE: That's right, sir.

MR. BERGER: -- and the substantialness of the injury.

ADMINISTRATIVE LAW JUDGE: Severity, sir, as it affects Mr. Buturla's ability to do substantial gainful activity. But how the injury occurred would have no bearing on that.

MR. BERGER: Do you mind if I proceed.

ADMINISTRATIVE LAW JUDGE: I don't want you to lengthen this hearing unnecessarily. So I thought I'd suggest it to you, but you may proceed.

MR. BERGER: I feel that it's relative to his disability and it's important.

ADMINISTRATIVE LAW JUDGE: I said that you may proceed, sir.

MR. BERGER: Thank you.

BY ATTORNEY:

Q And where did you feel pain?

A In my low back.

Q And how long had you been in the Police Force of the City of New York?

A At that time four years.

Q And had you ever had a previous back injury?

A No.

Q Even before being on the Police Force?

A No.

Q Were you taken to a hospital?

A Yes.

Q By what means?

A City ambulance.

Q And what hospital was that?

A Doctor's Hospital, Sir.

Q And how long were you in the hospital?

A Three days.

Q And did you have bathroom privileges?

A No.

Q Did they bring a bedpan to you?

A Yes.

Q And how did you leave the hospital?

A I believe I was driven home. I don't know who drove me - whether it was in an ambulance or my wife drove me or someone.

Q All right. When you got home --- Oh, in the hospital, did you see a doctor?

A When I first went in, yes. Dr. Mayer.

Q And did you see another doctor?

A Yes, Dr. Briggan.

Q And which doctor did you continue to see after you got home?

A Dr. Briggan.

Q And where did you see Dr. Briggan?

A At first in Doctors' Hospital. After that, in his office.

Q Is there a relationship between Dr. Briggan and the Police Department?

A I don't --- He might have been an honorary surgeon at one time, I don't know.

Q How often did you see Dr. Briggan thereafter?

A Once a week.

Q What did he prescribe for you - if he prescribed anything.

A Physiotherapy in his office three times a week.

Q And did he prescribe any appliance?

A Yes, sir, a brace.

Q And could you describe the brace?

A It's about a foot wide, wraps around the lower part of my back and it's connected by, I believe, five straps and it has metal bars in the back.

Q Did he prescribe any other appliance?

A After my second visit to the hospital, he had me get a portable traction for home.

Q When was your second visit to the hospital?

A In June of 1970.

Q Which hospital?

A Doctor's Hospital.

Q And how long were you there?

A A little less than a month.

Q And what did they do for you there?

A I was confined to bed and I had a portable - not a portable - a traction unit, and I was taken downstairs for concentrated traction, heat and massage.

Q And the traction that you had in bed, was that for 24 hours a day?

A Yes.

Q And what was that for?

A I believe it was to relieve the pressure on the lower back.

Q Would you describe the traction as it was attached in the bed to your body?

A I had this waist brace or belt wrapped around my waist which was connected to the foot of the bed on pulleys with weights.

Q Now, after you got out of the hospital, Dr. Briggin recommended the portable traction machine?

A Yes, he did.

Q And would you describe that machine?

A It was almost similar to the one in the hospital but on a smaller basis. It had the same type of belt that I'm wearing connected with cords to the foot of the

bed and weights pulling on this belt.

Q And how often have you used that traction machine to the present time?

A At least three times a week.

Q And what about your back support, how often have you used that?

A Every day.

Q And have you taken medication for pain for your back?

A Yes, I have.

Q And what type of medication was prescribed and by whom?

A Medication was prescribed by Dr. Briggin and it consisted of Percodan and Talwin and a muscle relaxer - I don't know the name of it.

Q Now, were you away from work -- Withdraw that. When were you discharged on 3/4s pay from the Police Department?

A June 15, 1972?

Q And up to that time were you away from work the total length of time?

A Yes.

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Q And for how long?

A From the time of the accident to the day I was discharged in June '72.

Q Well, did you return to work in the interim?

A I believe, in October, 1970.

Q How long did you work then?

A A few days.

Q And was that your usual type of work?

A No, it was, what they call, limited duty or night duty.

Q Now, with respect to the 3/4s, are you cognizant this comes about?

A You know, the Police Department regulations, yes.

Q And is it necessary that you be partially disabled totally disabled in order to get 3/4s in the Police Department?

A I believe it's a total disability.

Q Now with respect to -- do you know what is meant officially by "moonlighting" in the Police Department?

A By working at a second job.

Q And what does that mean about working on a second job?

A Well, in the Police Department you weren't allowed to work a second job.

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Q Well, how do they regulate people who are injured so far as their disability?

A Regulate?

Q Yes, how - is there any checkup?

A Oh, yes. They have superior officers, usually a sergeant, come to your home or call you up.

Q And you are then required to remain at home?

A Yes, sir.

Q And under the moonlighting regulations, you cannot take any outside work?

A No.

Q No matter how light it is.

A Correct.

Q After June the 15th of '72, what did you do?

A After my retirement from the Police Department?

Q Yes.

A I spent three times a week with a real estate company.

Q And for what purpose?

A I was looking into going into that type of work.

Q For how long did you do it?

A A number of months.

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Q Well, were you in the position of just learning  
did you ---

A Yes, I would just go there and, more or less,  
observe what was going on in the routine of the business.

Q And what was the outcome of it?

A I decided against it.

Q When was that?

A I would say the beginning of this year of '73.

Q Now in May of 1973; did you talk to Dr. Briggin?

A Yes, I did.

Q And what did he recommend to you?

A He suggested or recommended that I could do  
some sort of light work.

Q And what did you do pursuant to that recommendation?

A I went to my wife's --- My wife has a dog grooming  
shop in Staten Island and I spent a few hours of the day

here.

Q Each day?

A Yes.

Q And that's to the present time?

A Yes.

Q And prior to that did you go to that dog grooming

shop occasionally to see your wife?

A I would go to visit her, yes, in the morning.

Q How often would that be?

A A couple of times a week.

Q But you didn't do anything.

A There, no.

Q So that the first time you started to do something in the grooming shop was after May of 1973.

A That's correct.

Q Now, when you were in the hospital, would you describe ---that's the first hospital -- where you had the pain?

A In my lower back.

Q And eventually would you describe the after effects of that pain, where it was.

A After that I was getting the pain down my right leg and it would go down into my ankle. I would get a numbness in my right leg and also, at times, like a tingling sensation always on my right foot.

Q And how is that at the present time? That condition?

A The same.

Q And is that also true about the pain in your back?

A Oh, yes.

Q And what do you do for it?

A I use the traction and I have the belt that I wear and medication.

Q And when was the last time you saw Dr. Briggan?

A In September.

Q And how many times did you see Dr. Briggan before September? That's September of '73, is that right?

A Of this year, yes.

Q Will you tell us how many times you saw him and give us the dates of those visits.

A The first date was December 10, 1969 and up until last month, I think for a total of 70 visits.

Q Do you have a record to refresh your recollection?

A Yes.

Q Is that a bill from Dr. Briggan?

A Yes, sir.

Q Has it got the dates of visits?

A Yes, it does.

Q May I ask that it be marked as plaintiff's exhibit 1

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for identification?

ADMINISTRATIVE LAW JUDGE: Sir, are you offering it in evidence?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: May I have it please.

MR. BERGER: Is there -- off the record --

ADMINISTRATIVE LAW JUDGE: We will stay on the record, sir.

MR. BERGER: I want to know if there is any way of photostating it?

ADMINISTRATIVE LAW JUDGE: Yes. This consists of five sheets, sir?

MR. BERGER: That's right.

ADMINISTRATIVE LAW JUDGE: The statement of Dr. Henry Briggia, consisting of five pages, covering the period from December 10, 1969 to May 3, 1973, will be received in evidence as exhibit no. 36. Mr. Berger, we'll photostat it after the hearing is over and I'll give you the photostatic copy, okay?

MR. BERGER: All right, thank you.

ADMINISTRATIVE LAW JUDGE: You may continue, Mr.

BY ATTORNEY:

Q Were you examined on behalf of Social Security

Dr. Haboush?

A Yes.

Q About when was that?

A June of this year.

Q And did he take x-rays?

A Yes, he did.

Q And did he - while he examined you - did he make  
out his report?

A In his office, yes.

Q And did he dictate his report?

A Yes, sir, he did.

Q Did you hear the report being dictated?

A Yes, sir.

Q And how was it dictated?

A Through a machine similar to this.

Q And what did you hear?

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I won't permit  
an answer to that question. As you know, Dr. Haboush died  
prior to submitting a report. At least, I heard that he  
died prior to submitting a report to the Bureau of Disability  
Determinations which is the State Agency under contract with  
the Social Security Administration and which arranged for

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the examination of Mr. Buturla by that physician. I will not permit testimony of what a man who is now dead said sometime in June.

MR. BERGER: And in the absence of the report which was available to Social Security, I am now forced to use the best evidence of that report.

ADMINISTRATIVE LAW JUDGE: Sir, you say it was available to the Social Security Administration. I found out that there was no report available.

MR. BERGER: There were x-rays which the patient observed and there was a taping which the patient observed and heard.

ADMINISTRATIVE LAW JUDGE: Well, with respect to the x-rays, those were transmitted by Dr. Haboush's widow to the Bureau of Disability Determinations which then sent them on to Dr. Frank. Dr. Frank testified that he had x-rays taken in June. Isn't that right, sir?

MR. BERGER: Dr. Haboush took the x-rays in June.

ADMINISTRATIVE LAW JUDGE: That's right.

MR. BERGER: You said that Dr. Frank had the x-rays taken in June.

ADMINISTRATIVE LAW JUDGE: No, but Dr. Frank had the

x-rays which had been taken by Dr. Haboush in June.

MR. BERGER: That's correct but he didn't have the tape.

ADMINISTRATIVE LAW JUDGE: No, no one has the tape.

The information ---

MR. BERGER: Well ---

ADMINISTRATIVE LAW JUDGE: Excuse me, sir, let me finish, please. The information received by me from the State Bureau of Disability Determinations is that the widow told them that the tape was undecipherable for the purpose of preparing a report, and there is no report of the examination that Dr. Haboush had done.

MR. BERGER: I must renew my offer of proof that, under the best evidence rule, the client has heard what went on the tape. The Government could have brought in the tape and determined whether it was decipherable or not and I, again, make my offer of proof.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, you may make your offer of proof without questioning Mr. Buturja. Tell me what you intend to prove.

MR. BERGER: The secondary rule of what is the best evidence I have to prove through Mr. Buturja what he heard

on the tape.

ADMINISTRATIVE LAW JUDGE: Not through Mr. Buturla. You tell me what Mr. Buturla would testify to if I permitted him to testify.

MR. BERGER: He will testify what he heard, which is what he advised me, that Dr. Haboush stated on the tape that the patient, Douglas Buturla, had a herniated disc and that he had to have a laminectomy and that he was disabled unless he had a laminectomy.

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: That's your offer of proof.

You may question Mr. Buturla regarding other matters.

MR. BERGER: Now would you advise me what you mean by "other matters."

ADMINISTRATIVE LAW JUDGE: Well, if my ruling is erroneous with respect to not permitting you to question Mr. Buturla concerning what he alleged Dr. Haboush said into a tape while he was sitting there, then you are well protected if my decision is adverse to your client's interest.

MR. BERGER: Except that I would like Mr. Buturla to affirm what I have just stated for the record.

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ADMINISTRATIVE LAW JUDGE: The fact that you stated it is sufficient for my purpose, sir, and it will be sufficient for ---

MR. BERGER: Then you are wrong. He should have stated it on the record, sir.

ADMINISTRATIVE LAW JUDGE: If I'm wrong, I'm sure the court will assume that that's what he would have testified to.

MR. BERGER: I would rather --- and it can be stricken if it's ---

ADMINISTRATIVE LAW JUDGE: All right. Just to save time, you may ask Mr. Buturla.

BY ATTORNEY:

Q Now, what I have stated, is that correct of what you heard Dr. Haboush report into the dictating machine?

A Yes, it is.

MR. BERGER: And note my exception on the record.

ADMINISTRATIVE LAW JUDGE: About what, sir?

MR. BERGER: That fact that you --- I'll withdraw that. Withdraw my exception. Okay. I have no further questions.

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE

Q Mr. Buturla, how old are you now?

A 30.

Q What is your height?

A Six feet.

Q And your weight?

A Approximately 200 lbs.

Q Is that your usual weight?

A I would say so, yes.

Q Are you right or left-handed?

A Right-handed.

Q Do you live in a private home?

A It's a two-family house.

Q And, I assume, you live with your wife.

A Yes, sir.

Q Any children?

A Two children.

Q Can you tell me their birth dates?

A 8-19-70 and November 23, 1972.

Q Now, before coming to this building for the hearing,  
did you go anywhere to meet your attorney?

A Yes.

Q Where?

A At his office.

Q And you went to his office which is ---

MR. BERGER: 555 Fifth Avenue.

Q ---which is located at 5th Avenue and 44th Street,  
thereabouts?

MR. BERGER: 46th Street.

ADMINISTRATIVE LAW JUDGE: 46th Street, sir, thank  
you.

A Yes.

Q From your home, sir?

A Yes.

Q And how did you travel there?

A By car.

Q You drove?

A Yes.

Q And did you drive from his office down to this  
building?

A Took a cab.

Q Now, I understand that immediately after high  
school you were in the Navy for two years.

A Yes.

Q What assignment did you have there?

A I was a storekeeper.

Q What were your duties?

A More or less inventory. Anytime a division needed something, we would take it out of the storeroom or take him to the storeroom.

Q Were your duties mainly that of carrying the objects out of the storeroom?

A No.

Q What were your major duties?

A To check on inventory as they came aboard the ship and when somebody needed something, a tube or whatnot, to take them to the storeroom and get the requested material.

Q Do I gather that when merchandise came aboard the ship to be placed in the storeroom, you were given a list of what merchandise was supposed to be coming in?

A Yes.

Q And you made sure that the list was accurate?

A As it came in, we would check it off.

Q You would be one of the people doing that - working with the list?

A List, yes.

Q And did you do any writing of lists of any kind at any time?

A I believe at the time, I don't recall too vividly,

but I was in charge of the commissary goods, what the commissary used at the time and how much it cost at that time to feed a sailor or serviceman.

Q Did you make the computation?

A Yes.

Q When the commissary needed merchandise or food-stuffs, what would you have to do with that part?

A Nothing.

Q Someone else would handle it?

A Yes, they would have their own key to the store and they would just let us know what they were taking.

Q And I understand that you worked for United Parcel Service loading and unloading trucks for about three or four months?

A Yes.

Q And that you worked as an exterminator for one year?

A Yes.

Q Actually doing the exterminating work?

A Yes.

Q And then in September 1965, following a civil service examination, you were appointed to the New York City

Police Department?

A Correct.

Q And you were a patrolman?

A Yes.

Q And I gather that at the time of your accident on December 10, 1969 you were assigned to Staten Island?

A Yes.

Q Now, you testified that you did no work except for a few days limited duty in the Police Department between December 10, 1969 and June 15, 1972. Is that correct?

A Yes.

Q And after that date you had some relationship with a real estate company?

A Yes.

Q When did that start?

A I don't know if it was a month or two after I got out of the Police Department.

Q July or August?

A Yes. I guess it was toward the latter part of the summer.

Q That would make it in August. And did you receive any pay for your presence at that real estate company?

A None.

Q And you left there, you said, at the beginning of 1973. Can we assume that it was January?

A It was just before the holidays. You know like before Christmas and New Year's.

Q In December 1972?

A Yes.

Q How often did you report there?

A I didn't have to report. It was just like one day or maybe once or twice a week.

Q For how many hours?

A A few hours a day. I'd say three hours, four hours a day.

Q How did you get there from your home?

A I drove.

Q Now what do you do at your wife's dog grooming shop?

A Bathe the dogs, brush them and sometimes cut them.

Q Anything else, sir?

A No.

Q Did you take the place of any other employee?

A No.

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Q Did your wife have any other employee before you appeared on the scene in 1973?

A Not on a paying basis.

Q Well, did she have anybody helping her before 1973?

A Yes.

Q On a part-time basis?

A Yes.

Q Did she pay the individual?

A Yes.

Q Does she still have that individual?

A No.

Q So you took his place?

A Yes.

ADMINISTRATIVE LAW JUDGE: Excuse me, Mr. Buturla, I'd like to ask your attorney a question.

Mr. Berger, I'm not sure whether or not the claim here is limited to the period starting December 10, 1969 and ending in May 1973 or whether it's a continuing claim for disability.

MR. BERGER: No, it ends at May of '73. Now, can we go off the record here?

ADMINISTRATIVE LAW JUDGE: Why can't we stay on the record?

If we go off the record, I'm going to have to state for the record what happened here, so I'd rather remain on the record. Do you have anything to say, sir?

MR. BERGER: As I understand, the social security rule is that even if he's partially employed from May of 1973 to the present time, he's not entitled to any benefits, is that right? During that period?

ADMINISTRATIVE LAW JUDGE: The law and regulations provide that if an individual is able to perform any substantial gainful activity, despite any impairment or impairments he may have, that individual is not entitled to benefits.

MR. BERGER: Then my original statement is correct and accurate that the claim is until May of 1973.

ADMINISTRATIVE LAW JUDGE: Thank you for clarifying it, sir.

MR. BERGER: Thank you.

BY ADMINISTRATIVE LAW JUDGE:

Q Mr. Buturla, do I understand correctly that you have been hospitalized only on two occasions since your accident?

A Yes.

MR. BERGER: Note my objection to the work "only" as being characteristic and self-serving.

Q Do I understand correctly, even though I haven't heard it, that Dr. Briggan was paid from some fund of the Police Department for your visits at least through June 15, 1972?

A Not that I know of.

Q Did you pay him?

A Not as yet.

Q And that's the statement that was received in evidence as exhibit 36?

A Yes, sir.

MR. BERGER: I would like leave to supply a paid bill from Dr. Briggan because it is expected that this bill be paid since the action, as a result of the police car being hit by another car, was settled in the summer for the sum of \$31,250.00 and that bill will be paid. I would like to submit that bill and leave the record open until such time.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, for the purpose of this claim, it will be assumed by the Social Security Administration, including myself, that Mr. Buturla intends to, and undoubtedly will, pay the bill.

MR. BERGER: Thank you.

ADMINISTRATIVE LAW JUDGE: With respect to that settle-

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ment, Mr. Berger, that took place during the week of October 1st, 1973?

MR. BERGER: No, it took place last week.

ADMINISTRATIVE LAW JUDGE: Do you know the date?

MR. BERGER: (To claimant) Was it Monday?

MR. BUTURLA: It was settled Monday of last week.

ADMINISTRATIVE LAW JUDGE: That would be Monday, the 15th?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: This is two weeks after you told me you were going on trial in the Supreme Court.

MR. BUTURLA: It took two weeks.

ADMINISTRATIVE LAW JUDGE: Were you on trial for two weeks?

MR. BERGER: What are you referring to that I told you?

ADMINISTRATIVE LAW JUDGE: You asked me for an adjournment of the hearing which was originally scheduled for October 3rd.

MR. BERGER: Yes, that might have been the reason. We were on trial (To claimant) How long were we on trial?

MR. BUTURLA: Two weeks.

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ADMINISTRATIVE LAW JUDGE: Okay, sir.

BY ADMINISTRATIVE LAW JUDGE:

Q Do you wear your brace overnight?

A No.

ADMINISTRATIVE LAW JUDGE: I have no further questions, Mr. Berger. Do you want to question Mr. Buturla any longer?

MR. BERGER: I have one question.

ADMINISTRATIVE LAW JUDGE: You may ask.

BY ATTORNEY:

Q Did you have a conference with Dr. Briggin in May of '73?

A Yes.

Q And as a result of that conference did you start working in that poodle shop?

A Yes.

MR. BERGER: I have no further questions.

ADMINISTRATIVE LAW JUDGE: Thank you. We'll now call Dr. Fishman. Will you please rise, sir, to take the oath.

The witness, SIDNEY A. FISHMAN, having been first duly sworn, testified as follows:

ADMINISTRATIVE LAW JUDGE: Mr. Berger, before I start questioning Dr. Fishman, I'd like to explain why he is here.

The Bureau of Hearings and Appeals maintains a list of a number of qualified vocational experts who are experienced in the field of vocational counseling. Dr. Fishman is one of the experts on this panel. He is not an employee of the U.S. Government. I sent him all the exhibits that have been received in evidence and, as you know, he has been at this hearing since its inception. I'm going to ask him to express an opinion whether or not Mr. Buturla was able to do any work despite his impairments for the period between December 10, 1969 and May 1973 and to express the reasons for his opinion. Now, I'm going to ask Dr. Fishman to assume certain dysfunctions. You will have an opportunity to ask him to assume whatever dysfunctions you want him to assume and he will answer your questions later on. You have a right to object to any question I might ask. After I finish, you will have an opportunity to question him.

MR. BERGER: Yes, but before I make any objections --- I don't know if I can or cannot --- I first want to voir dire Dr. Fishman as to his qualifications.

ADMINISTRATIVE LAW JUDGE: I'll give you that opportunity, but I do want to remind you that I sent you his

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qualifications as exhibit no. 34.

MR. BERGER: Well, I -- there still may be things that are left out and I have to be sure.

ADMINISTRATIVE LAW JUDGE: Yes, I will give you an opportunity, sir.

EXAMINATION OF DR. FISHMAN BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, will you, please, state your name.

A Dr. Sidney Fishman.

Q And your address.

A 200 Cabrini Blvd., New York, New York 10033.

Q Do you understand --- Well, first tell us your occupation - where you're employed.

A I am a rehabilitation psychologist on the faculty and research staff of two elements of New York University: one, the New York University Post-graduate Medical School and, secondly, the New York University School of Education.

Q I show you a document which has been received in evidence as exhibit no. 34. It appears to be a contract together with the background of one --- Sorry, it's Nathan N. Slater. We have the wrong attachment to the contract. It doesn't refer to you, does it?

A No, only the first page which is part of my contract.

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The remainder relates to some other individual.

Q We'll have a recess in order to obtain your professional qualifications.

(At this point a recess was declared.)

ADMINISTRATIVE LAW JUDGE: On the record. Mr. Berger, I did send you the resume and the background of Dr. Sidney Fishman which you are now turning over to me for the purpose of proceeding with this hearing. Is that correct, sir?

MR. BERGER: Yes, but it's not under exhibit 34.

ADMINISTRATIVE LAW JUDGE: True, it wasn't marked as exhibit 34. May I substitute Dr. Fishman's resume for the one that is in the record? Better yet, may we receive this resume in evidence as exhibit no. 37?

MR. BERGER: Yes, but why don't I have exhibit 34?

ADMINISTRATIVE LAW JUDGE: Well ---

MR. BERGER: Well, I don't have a copy of exhibit 34 which you did not send me.

ADMINISTRATIVE LAW JUDGE: It's true. If you want, I'll make a copy for you but it has nothing to do with Dr. Fishman. It has to do with another vocational expert whom I never intended to call for this hearing.

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MR. BERGER: Well, I would like the document since it's now a matter at issue.

ADMINISTRATIVE LAW JUDGE: Well, I'll have a recess and I'll have a copy made for you. Is that what you want?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: We'll have a recess.

(At this point a recess was declared.)

ADMINISTRATIVE LAW JUDGE: The hearing will be resumed.

Mr. Berger, I'm presenting you with a copy of the document which was received in evidence as exhibit no. 34 and I'm returning the document which I sent you originally in September and which you produced for me, and I ask your permission to receive it in evidence as exhibit 37. It is the resume of the experience and background of Dr. Sidney Fishman.

MR. BERGER: All right.

ADMINISTRATIVE LAW JUDGE: The resume consisting of nine pages will be received in evidence as no. 37.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, I show you this resume and ask if it was prepared under your supervision.

A Yes, it was, sir.

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Q Does it correctly reflect your education, experience, professional affiliations and publications?

A Essentially correct. However, in 1971 I was editor of two publications of some importance, one, A Textbook on Spinal Orthotics and, secondly, a Textbook on Lower Extremity Orthotics, both published by the New York University Post-Graduate Medical School.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, you wanted to question Dr. Fishman with respect to his qualifications?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: You may do so.

EXAMINATION BY ATTORNEY:

Q Will you tell us what your educational background is, Doctor?

A Yes, sir. I have a Bachelor's degree from the City College of New York in 1939 and a Master's degree from Columbia University in 1940 in the field of Vocational Guidance and a Doctoral degree from the same university in the field of Clinical Psychology in 19---

Q Is that a Ph.D., Doctor?

A A Ph.D.

Q That's not a doctor of medicine, is it, Doctor?

A It is not. -- in 1949.

ADMINISTRATIVE LAW JUDGE: Have you finished with your answer, Dr. Fishman?

DR. FISHMAN: Yes, that's my educational background.

ADMINISTRATIVE LAW JUDGE: You may continue, Mr. Berger.

MR. BERGER: He's your witness.

ADMINISTRATIVE LAW JUDGE: You wanted to examine him on his ---

MR. BERGER: Just on voir dire. That's it.

ADMINISTRATIVE LAW JUDGE: You're finished? Thank you, sir.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, is your appearance here today as a result of a telephone call to your office to find out when you're available and some letters from me?

A Yes, two letters to be exact.

Q Have you had any discussion with me about your testimony today?

A None whatsoever.

Q Have you discussed the merits of this case with anyone in the Social Security Administration?

A No, sir.

Q In your work have you been called upon to make studies of the vocational potentialities of individuals with various types of impairments?

A Yes, sir. That's a basic and fundamental responsibility of people in rehabilitation psychology.

Q Have you kept abreast of the local economic situation and employment outlook?

A Yes, sir. That is the second critical aspect of the field.

Q Have you been required to know what types of jobs are performed in various types of businesses and the duties of such jobs?

A Yes, sir.

Q Have you ever been required to read and evaluate medical reports and discuss cases with physicians in carrying out your duties?

A Yes, sir. This is a routine part of my professional responsibilities and I do it on almost a daily basis.

Q Were exhibits 1 to 32, inclusive, made available to you prior to this hearing?

A That's correct.

Q Was exhibit no. 36 made available to you during

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the course of this hearing?

A Yes, sir, it was.

Q Are you familiar with the contents ---

ADMINISTRATIVE LAW JUDGE: Yes, Mr. Berger?

MR. BERGER: Just want to find exhibit 36.

DR. FISHMAN: It's the bill.

MR. BERGER: Oh. All right.

ADMINISTRATIVE LAW JUDGE: Thank you, sir.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, are you familiar with the contents  
of all those exhibits?

A Yes, sir, I am.

Q Were you present throughout the hearing today?

A Yes, sir.

Q Have you listened to the testimony that was  
taken here today.

A Yes, sir.

Q Have you had occasion to deal with individuals  
with back impairments including herniated discs and nerve  
root pressure?

A Yes, sir, I have.

Q Have you counseled such individuals with respect  
to their work potential?

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A In substantial numbers.

Q Now, Dr. Fishman, I intend to ask you whether Mr. Buturla was able to work during the period from December 10, 1969 to May 1973 ---

ADMINISTRATIVE LAW JUDGE: I see you have your hand up, Mr. Berger.

MR. BERGER: Yes, because before he answers, I want to note my objections to these questions.

ADMINISTRATIVE LAW JUDGE: Very well, sir.

MR. BERGER: This answer calls for medical conclusions. This man here is not a doctor and would be practicing medicine without a license if he told and advised people how long they should stay away from work or advise them of the medication that they took or what they should do with respect to their injuries.

ADMINISTRATIVE LAW JUDGE: Your objection ---

MR. BERGER: As a matter of law, I object to this man's testimony with respect to that. You had a doctor --- You cannot usurp the function of a doctor here.

ADMINISTRATIVE LAW JUDGE: IT IS my interpretation that the testimony I will attempt to adduce from Dr. Fishman does not impinge upon the prerogatives of the medical

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profession.

MR. BERGER: Well, why don't you ask him if he agrees with what the doctor stated here today about the total disability and partial disability?

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I will permit you to ask any questions you wish after I have finished.

MR. BERGER: No, your question is illegal and out of order and, as a matter of law, has no place here.

ADMINISTRATIVE LAW JUDGE: Your objection is overruled and you have your exception, sir.

(BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, I intend to ask you whether Mr. Buturla was able to work at any job during the period from December ---

MR. BERGER: Now ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger, you have an objection?

MR. BERGER: Now I want to tell this witness that if he answers, he's practicing medicine without a license, and I'm going to make a charge.

ADMINISTRATIVE LAW JUDGE: All right. Quit intimidating the witness and let us continue.

MR. BERGER: I'm not intimidating. I'm telling you what the legal rights are here today and not to go beyond legal

rights.

ADMINISTRATIVE LAW JUDGE: You've made your position clear. Please let me continue.

BY ADMINISTRATIVE LAW JUDGE:

Q I'm sorry I have to repeat, Dr. Fishman. I intend to ask you whether Mr. Buturla can work at any job during the period from December 10, 1969 to May 1973 based on his age, education, training and work experience as well as certain dysfunctions which I shall set forth for your consideration. Do you understand the procedure I intend to follow?

A Yes, sir, I do.

Q Do you feel you need additional information before I state the dysfunctions I want you to assume?

A There is just one area I could use some additional information. There were several references here to some part-time real estate experience. It may help my testimony if I had a clearer understanding of exactly what took place during that experience.

Q Even though the testimony of Mr. Buturla was that he was there but once or twice a week and for three or four hours a day and it was an unpaid job?

A Well, it's not of critical importance but I have no idea what he did there.

Q All right, we'll ask him.

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ADMINISTRATIVE LAW JUDGE: Mr. Buturla, would you please let us know what you did at the real estate office?

MR. BUTURLA: Observe. Just observed the routine or procedure as it is in a real estate business.

ADMINISTRATIVE LAW JUDGE: What routine did that company have? In other words ---

MR. BUTURLA: Actually, what I did, your Honor, I sat with one of the real estate men there and watched him deal with, you know, a prospective buyer coming into the office, looking for a home or looking for land - whatever it might be.

ADMINISTRATIVE LAW JUDGE: That company handled real estate for sale?

MR. BUTURLA: Yes.

ADMINISTRATIVE LAW JUDGE: Did they also rent apartments?

MR. BUTURLA: I believe they did, yes.

ADMINISTRATIVE LAW JUDGE: Did they rent offices?

MR. BUTURLA: Offices? I don't know.

ADMINISTRATIVE LAW JUDGE: Did they rent manufacturing plants?

MR. BUTURLA: I don't think so.

ADMINISTRATIVE LAW JUDGE: So your experience is limited to the sales of homes and the renting of apartments.

MR. BUTURLA: Mostly with homes.

BY ADMINISTRATIVE LAW JUDGE TO WITNESS:

Q Is that sufficient for your purpose?

A Thank you. One additional clarification. There have been a number of references here to Mr. Buturla wearing a brace. Is this a brace with metal components or completely made of fabric?

Q I think he testified that it has some metal.

(To claimant) Is that correct?

MR. BUTURLA: Yes.

Q Anything else, Dr. Fishman?

A No.

Q All right, Dr. Fishman. Assume that I should find that Mr. Buturla suffers from a back impairment which (1) requires him to wear a lumbosacral brace for support and (2) requires him to work at a job which is primarily seated one with an opportunity to stand at will and which does not involve frequent bending of the body, lifting more than 10 lbs., pushing with a force of more than 10 lbs. or pulling with a force of more than 10 lbs.,

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are you able to state whether or not he was able to work at any job?

MR. BERGER: I'm going to object to that hypothetical question. That's being vague, speculative and possible --- I object to the answer in any event.

ADMINISTRATIVE LAW JUDGE: What part of the facts I

ask Dr. Fishman to assume is vague?

MR. BERGER: You didn't say how many days a week, didn't say how many hours he's got to push, pull, bend, lift or how long he sits or how long he stands and I object to it. The hypothetical is out of order.

ADMINISTRATIVE LAW JUDGE: I will add to the hypothetical to satisfy you, in part, Mr. Berger. This is for a full time job, Dr. Fishman. And as for your objection - other objections - Mr. Berger, the testimony by Dr. Frank is that there would be no impairment whatever to Mr. Buturla's pushing and pulling even with a force up to 25 lbs.

MR. BERGER: Now you're talking as of the present time.

ADMINISTRATIVE LAW JUDGE: For the purpose of my hypothetical question, I'm assuming the same condition existed during the period from December 10, 1969 to May 1978. As

I indicated previously, you may ask Dr. Fishman based on any assumption.

MR. BERGER: No, I'm-- Your questioning is completely out of line in view of your own witness's medical testimony.

This man was totally ---

ADMINISTRATIVE LAW JUDGE: Excuse me, Mr. Berger, Dr. Frank was not at this hearing at my instance. I told you in a letter that I was not going to call any witness except a vocational expert and that I intended to question Mr. Buturla. It was you who asked for Dr. Frank's appearance.

MR. BERGER: That's a matter of semantics. He is your witness. You chose him as your doctor. You had the physical. I did not have the physical. He is your man and your witness and if you did not want him, I had to have him here. And based on what he has testified here today, your question is without limits. It's unlimited, unfounded, highly speculative --

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: --certainly illegal.

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: I have.

ADMINISTRATIVE LAW JUDGE: I know of no case decided

by the courts to the effect that the type of question I asked is illegal. Your objection is overruled and you have an exception.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, will you answer the question.

A Yes, as I remember the question - the limitations that you have detailed in your question to me - there are a variety of jobs that an individual of the age, education and training and experience of the claimant could fill.

Q Would you give us the job titles you have in mind, Doctor.

A I think it might be better if I first indicated five categories of jobs because each of these include within them very substantial numbers.

Q Very well, sir. What are the categories?

A One are clerical jobs.

Q Office clerical?

A Yes.

Q Second?

A The second would be bench assembly jobs.

Q Third?

A Bench machine operation and fourth, inspectional

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jobs. I said five, but I was in error, I meant four categories.

Q All right, sir. Would you tell us about the office clerical jobs?

A Well, within this general category of clerical jobs, there are many varieties identified by specific titles, such as, reservation clerk, a general office clerk, an information clerk, a telephone order clerk. All of these have slightly different responsibilities and they are representative of many other clerical jobs. However, the common thread which runs throughout them is that they are essentially sedentary in nature which is defined technically in the field of vocational counseling as a job which under no circumstance requires the application of more than 10 lbs. of force for any purpose whatsoever.

Q Dr. Fishman, I'd like to interrupt you. I gather that in answering my question you are bearing in mind the dysfunctions I asked you to assume. Is that right?

A Correct.

Q I don't see the point in your repeating or defining the word sedentary if the jobs you have mentioned and will mention fit within the dysfunctions I have asked you to assume.

A Okay.

Q Do you want to give us the duties of these jobs?

A Yes. Well, the reservation clerk is an individual who, primarily by means of personal contact or telephone, receives requests for hotel space or transportation space, makes a record of the pertinent information and then issues confirmations regarding the transaction both to the client and to the employer. A clerk, general office, is a much broader, much varied job. The duties there essentially involve the processing of some type of records or papers and this may involve sorting; it may involve checking; it may involve responding to routine inquiries; it may involve preparation of materials for mailing; it may involve some filing. This is the typical description of a general office clerk.

An information clerk - alternate title would be receptionist - is primarily a sitting, but sometimes in a standing, position - provides information regarding locations in a business or commercial or institutional establishment.

Telephone order clerk is practically self-evident. He takes information regarding the specific requirements of the customer, makes a record of the desired items,

applies the correct price to them, makes arrangements for appropriate billing and then processes the papers for appropriate action by someone else.

Q What about the bench assembly category?

A Well the bench assembly category are, primarily, industrial jobs which appear in a variety of industries in the New York City area. Because of the limitations that you have given me, I must limit these jobs to relatively light industries such as footwear, belts, wallets and handbags, toys, dolls, pens and pencils, pharmaceuticals, small metal products, such as kitchen utensils and electrical appliances, small electrical appliances. These jobs, because of their great diversity in relation to industry, have a general title called assembler small products. In one instance they are called assembler, electrical because of the large numbers involved in the electrical industry. In some instances they are further identified by specific duties such as packer, trimmer, paster, solderer-assembler. Now in all of these industries, the essential job is that of receiving segmental parts of the product and by means of simple tools or manual manipulation or glues or pastes or various bonds, assembling the item either on a component basis or a more comprehensive basis and moving it along to

the next step in the processing.

Q Will you discuss the jobs you have in mind with respect to the category of bench machine operation?

MR. BERGER: I object to cluttering the record here. Just a minute. If this man was able --- Sure there are jobs. Let's get it on the record. (To hearing assistant) Have you turned off the record?

ADMINISTRATIVE LAW JUDGE: The record ---

MR. BERGER: (To hearing assistant) You pressed the button.

ADMINISTRATIVE LAW JUDGE: Excuse me, Mr. Berger, the record is on. The machine makes noises every once in a while.

MR. BERGER: Well, there's no question that if this man was able to work, he could get a million jobs. Let's not clutter up the record with showing what kind of jobs he could get. The question is: this man was not able to work. This witness that you have - this alleged expert - is usurping the position of a doctor who stated that the petitioner here today could not work, was totally disabled through June the 15th of 1947 and has gone beyond the doctor. He's become the doctor, practicing medicine without

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a license. I strenuously object to cluttering and garbagging the record.

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: I have.

ADMINISTRATIVE LAW JUDGE: As I indicated previously, that objection is overruled and you have an exception.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, I asked you regarding the jobs in the category of Lench machine operation--- Yes, Mr. Berger, what is it?

MR. BERGER: I have conceded that if my petitioner could work, he could get a million jobs. What's the point of bringing all this stuff back. Your time is valuable and my time is valuable.

ADMINISTRATIVE LAW JUDGE: There is a question as to whether or not Mr. Buturla can work at a million jobs based upon the dysfunctions I asked Dr. Fishman to assume.

MR. BERGER: But --

ADMINISTRATIVE LAW JUDGE: Based on those dysfunctions, Mr. Berger, are you conceding -- are you admitting for the record -- that Mr. Buturla could do a million jobs in the New York City area?

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MR. BERGER: Look, don't twist the record. The record will speak for itself and I strenuously object to your twisting the record. I said that if he were able to work - and you know very well he couldn't work - at nothing ---

ADMINISTRATIVE LAW JUDGE: Mr. Berger ---

MR. BERGER: ---in no shape, manner or form, up to June of 1972. And the Police Department checked him out day in and day out and he was not allowed to work at any type of work, light or heavy. And after he's out on 3/4s, then he's able to do work and you had a doctor verify it here today. You're usurping every rule and regulation of order and decorum.

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: I have finished.

ADMINISTRATIVE LAW JUDGE: Again, I am overruling your objection and I must remind you that this hearing is being conducted under my supervision.

MR. BERGER: Well, I have a right to object.

ADMINISTRATIVE LAW JUDGE: You have.

MR. BERGER: I have to remind you of that ---

ADMINISTRATIVE LAW JUDGE: You have ---

MR. BERGER: And to except. I except to what your Honor

has just stated.

ADMINISTRATIVE LAW JUDGE: You have objected ---

MR. BERGER: --that you're reminding me.

ADMINISTRATIVE LAW JUDGE: You have objected, but I find it unnecessary for you to object to the same item more than once.

BY ADMINISTRATIVE LAW JUDGE:

Q Now, Dr. Fishman, with respect to the category of bench machine operation, will you tell us the job titles you have in mind?

A Well, just by way of example, the most common jobs of variety are bench punch press operators, drill press operators, stapling machine operators, crimping machine operators, heat sealing machine operators, eyelet machine operators, grinder-polishers.

Q And where are these jobs found?

A These are found in essentially the same industries that I have referred to under the bench assembly category that I spoke of previously.

Q Can we move on to the inspectional category?

A There, speaking succinctly, the job again is done primarily in a seated position with the ability to stand

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at will. The function here is to inspect the adequacy of products--either visually or by means of gauges or by the use of jigs or by means of the use of simple functional tests, and to ---

MR. BERGER: Do you mind if I smoke?

ADMINISTRATIVE LAW JUDGE: Yes, I do, sir. There's no smoking permitted.

A --and set aside those items which fail to meet the prescribed standards.

ADMINISTRATIVE LAW JUDGE: If you want a recess for the purpose of smoking, Mr. Berger, I will call a recess.

MR. BERGER: How much longer is this going to continue?

ADMINISTRATIVE LAW JUDGE: I will have -- if you don't --

MR. BERGER: I have an office to take care of.

ADMINISTRATIVE LAW JUDGE: --if you don't object and take up -- If you don't object more than once on a specific issue, I won't take more than seven or eight minutes of Dr. Fishman's time.

MR. BERGER: Okay, I want to take a recess.

ADMINISTRATIVE LAW JUDGE: We'll have a recess.

MR. BERGER: Thank you.

(At this point a recess was declared.)

ADMINISTRATIVE LAW JUDGE: The hearing will be resumed.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Fishman, how much, if any, training would Mr. Buturla need in order to be able to perform satisfactorily in the jobs that you have mentioned?

A There would be some variation. However, it would vary between a matter of several hours to a question of several days to a week at the most in some of the clerical activities before he reached an acceptable level of efficiency.

Q That's only clerical. How about the others?

A No, I said -- I didn't make myself clear. I said the variation of the several hours to several days at the most - the longest period being for the clerical jobs.

Q Thank you. And do all the jobs you mentioned exist in the New York area?

A Yes, sir.

Q How do you know that they exist here?

A Well, I know on the basis of probably three major reasons. One, my own professional activities that involve surveys and contacts with a variety of employers

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and I have visited plants and have seen the existence of these jobs. In addition, I receive and read regularly the reports of the U.S. Department -- excuse me, the New York State Department of Labor and the New York State Employment Service which details changes in the job market and the number of placements made on a monthly basis and, lastly, the most basic reference regarding the existence of these jobs would be the actual hand count of people doing these jobs as done in the United States Bureau of the Census.

Q Dr. Fishman, do you have any personal knowledge as to whether or not the firms, where the jobs you mentioned exist, hire handicapped people?

A I have such knowledge.

Q And what is your knowledge?

A Well, my knowledge is that there is, of course, a varied attitude on this matter. There are a limited number - a minority - of employers who would not hire the handicapped. However, I would clearly say that a majority of employers would hire people with impairments, their interests being primarily their ability to work on a full-time basis and perform the duties.

Q Thank you, Dr. Fishman.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, you may question the doctor.

EXAMINATION OF DR. FISHMAN BY ATTORNEY:

Q On the last question, Doctor. These firms are big firms that you're talking about, generally?

A Big and small.

Q And, generally, have a medical examination, do they not?

A Yes, sir.

Q And when there's a history of a herniated disc and being discharged on 3/4s from the Police Department, do they consider that type of employee a good risk or a bad risk?

A That would depend ---

Q From your experience, Doctor?

A That would depend upon how the employee represented himself.

Q You mean he should lie?

A It would depend on how the employee represented himself.

Q I just gave you this statement. He has a herniated

disc. Based on that, would you tell me how many of these employers would consider him to be a good risk?

A I can't answer that question.

Q Now, Doctor, when you based your opinion, you didn't give us a medical opinion, did you?

A No, sir.

Q What did you base your opinion on?

A On the hypothetical dysfunctions given me by the administrative judge.

Q Did you hear Dr. Frank here today?—

A Yes, sir.

Q Did you base your opinion on what Dr. Frank stated here today?

A Primarily on what the judge said to me.

Q Well, what did he say to you?

A Well, I can repeat the question.

Q No, let's see if you understood it. You can tell us what it was.

A Let us assume that we have an individual with a back impairment, who because of this condition needs to wear a brace, and on the basis of a full-time job which is primarily performed in the seated position and does not

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involve frequent bending, or lifting, pushing, pulling none of which to exceed 10 lbs., do I believe there are any jobs that an individual with this person's age, education, training and experience is able to fulfill.

Q You left out the time, Doctor.

A I'm sorry. I said a full-time job.

Q As of what time period, from when to when?

A He gave me no such information in the question.

Q So that your answer is not encompassing from the year 1969 of December to the present time?

A My answer has no time reference.

Q Well, what time are you referring to?

A I am referring to no time.

Q You mean this could be ten years from now, 20 years from now?

A On the basis of the question asked me, yes.

Q Or 20 years ago?

A Yes, sir.

Q And did you hear Dr. Frank state that he was totally disabled up to June 1972?

A I don't know -- I don't recall hearing that but he may have said it.

Q Well, assuming that he said it, so that we can

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at least square that away - assuming that he said it, would you state that he was able to do any of the this type of work from December of 1969 to June of 1972?

A No, on the basis of the doctor's statement that you have just given me, I would not make that statement.

Q Thank you. Now, did you know the occupation of Douglas Buturla before you came here?

A Yes, sir.

Q And did you make any research about the Police Department and the meaning of 3/4s discharge?

A No, sir.

Q Were you advised that he had been discharged on 3/4s on June 15, 1972?

A I believe the record indicated that he had been discharged. I don't recall --

Q Will you indicate what part of the record showed it?

A Exhibit 29. Signed by Stephen McCoy, M.D. The last statement, "The officer was retired on a certificate of accident disability on June 15, 1972."

Q Well, did you check out what that meant?

A I know exactly what it means.

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Q What does it mean, Doctor?

A He was retired on a certificate of accident disability.

Q Well, what does it mean from the day of the accident which is December the 19?--the 10th of 1969 to June 15, 1972?

A It means what it said in the previous sentence. He was found physically unfit for the performance of police duty by reason of discogenic disease.

Q And what does that mean to you? Physically unfit? Totally or partially? Did you ascertain it?

A It's impossible to say.

Q But you did not ascertain it, did you, Doctor?

A No, I did not.

Q Don't you think it was part of your function here to ascertain it?

A No, I don't think so.

Q Well, if you knew that the Police Department required total disability before giving a 3/4s discharge, would you give an answer as you have to his Honor with respect to the years from December 11, 1969 to June 15, 1972?

A I couldn't do that without having studied the

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rules and regulations of the Police Department and their definition of what constitutes total disability.

Q All right. Assuming that that is a total disability that when they are discharged on 3/4s - I repeat the question - based on the assumption.

A I still don't know the meaning of total disability as used by the Police Department.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, may I suggest that if you define it as used by the Police Department, Dr. Fishman will answer your question.

Q Did you hear the witness state here earlier today that the total disability includes and encompasses an entire disability and not just a partial disability but that the man must be entirely disabled before he can be eligible for 3/4s discharge?

ADMINISTRATIVE LAW JUDGE: Mr. Berger, may I ask whether that means he's bed-ridden?

MR. BERGER: No, that has nothing to do with being bed-ridden. And I am now dealing in respect to the Police Department and what the Police Department 3/4s is and you are going afield.

ADMINISTRATIVE LAW JUDGE: Dr. Fishman says he doesn't know what 3/4s disability ---

MR. BERGER: You told me to explain to him based on the witness who is a police officer and his knowledge of what 3/4s is.

ADMINISTRATIVE LAW JUDGE: Well, in my estimation, you haven't explained. You repeat the words "total disability." What do you mean by total disability according to Police Department definition?

MR. BERGER: I don't -- Let me ask him if he understands what I mean by total disability.

ADMINISTRATIVE LAW JUDGE: Well, all right. You may ask.

BY ATTORNEY:

Q Do you know what I mean by total disability and partial disability?

A Not in the technical sense.

Q What sense do you understand it?

A Only in conversational sense.

Q Well, what's the conversational sense that you understand it, if you understand anything.

A In the conversational sense, it means that the individual cannot do anything.

Q Any work.

A Anything.

Q Well, anything includes work.

A Oh, yes.

Q That's what you're talking about, isn't it.

That's what you're an expert on - work?

A Is that a question?

Q Yes.

A Yes, I consider myself to be an expert on work,  
yes.

Q And disability is part and parcel, implicitly,  
of the word "work?" Let the record show how long it's  
taking the witness to answer these questions.

A Would you repeat the question?

Q Is work implicitly a part of disability and  
disability, interchangeably, an implicit part of work?

A I think the answer is, yes, if I understand your  
meaning which is not at all clear. Would you like me to  
clarify?

MR. BERGER: No. Now, if according to the Police  
Department he is totally disabled from work - totally -  
from December 11, 1969 up to June 15, of 1972, would your  
answer be the same to his Honor with respect to this man's

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capability of doing any work.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, didn't you make a misstatement?

MR. BERGER: Well, correct me if I have.

ADMINISTRATIVE LAW JUDGE: The Police Department said he is disabled for police duty. They didn't say "any work" whatsoever.

MR. BERGER: Well, I'm talking about police duty, that's correct.

ADMINISTRATIVE LAW JUDGE: Do you still remember the question, Dr. Fishman?

DR. FISHMAN: Pardon me, yes.

ADMINISTRATIVE LAW JUDGE: Then, please answer it.

DR. FISHMAN: It has no bearing on the answer.

BY ATTORNEY:

Q Did you hear the witness state that -- and you have not checked this which you knew he was a policeman -- you have not checked that no. 1.. Do you know that they keep constant surveillance of a policeman to see that they are at home during their disability period?

A I was not aware of that.

Q I know. Do you know that they are not allowed to

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do moonlighting during this period of time or do any type of work during this period as a police officer?

A I would guess as much. I didn't know the regulations.

Q Well, in the light of that, would you say that this officer could do any work outside of his police work? In the light of a total disability as found by the Police Department?

A I still can't answer because I don't know what total disability means to the Police Department. I do know that the definition of total disability differs from each agency of government and each institution, and they have very precise definitions as to what that means. I am unfamiliar with the Police Department's precise definition of what they mean. If I am remiss in competency for not knowing so, I apologize, but I don't know.

Q Now, you heard the doctor state that the petitioner was disabled, partially, from June 15, 1972 to the present time. This is Dr. Frank. Do you agree with that?

A I have no reason to question it.

Q You say you don't recall if he stated that the petitioner was totally disabled from December 11 of 1969 to

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June 15 of 1972. Do you disagree with that?

A Well, I didn't remember him making the statement.

Q If he said it.

A No, I have no argument with that.

Q Now, in your expertise, somebody comes to you for advice. Do you tell him how long to stay away from work?

A No, sir.

Q And can you prognosticate how long he can stay, or make a prognosis how long he can stay, away from work?

A Not legally.

Q And can you advise the patient medically what type of work to take?

A No, sir.

Q And come to a conclusion if the patient is totally disabled or partially disabled, medically?

A In my actual practice I come to a conclusion as to his prospects for re-employability based on a combination of all factors including the medical.

Q Strictly based on the medical?

A No, sir.

Q So, then, you are performing a medical function,

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are you not, above and beyond a medical doctor?

A I'm not aware of that.

Q Well, you just said you don't do it based on the medical.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, his answers are in the record. I think you're arguing with the witness unnecessarily. You made a statement that, if he testifies, you're going to prefer charges against Dr. Fishman. Why don't you leave it at that?

MR. BERGER: All right, let's put it where it is. I didn't say I was going to make any charges. And I object to your Honor's being the advocate against the petitioner when you are here to be the advocate for all parties here and keep a balance. Certainly, from the start - the beginning - the record is replete with your questions and, I say, they are continuously opposed to the claim made in good faith by this petitioner. I have seen nothing where you have asserted yourself on behalf of this petitioner. The record is completely bare.

ADMINISTRATIVE LAW JUDGE: Have you finished your statement, sir. You may continue questioning Dr. Fishman.

MR. BERGER: I ask that the record be read back to

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Dr. Fishman with respect to what Dr. Frank answered to me about the disability period - if he agreed with the Police Department disability period that he was totally disabled from December 11, 1969 to June 15, 1972.

ADMINISTRATIVE LAW JUDGE: I don't think we could find that on the tape that easily, Mr. Berger, and I'm going to have to deny that motion.

MR. BERGER: Well, I ask that in the recollection of his Honor if that is not correct and to direct the witness - to remind the witness - and refresh his recollection.

ADMINISTRATIVE LAW JUDGE: I do not recall that Dr. Frank testified that Mr. Buturla was totally disabled for any length of time, but the record will show what Dr. Frank testified.

MR. BERGER: Now, at this time, I want to renew my application to have the opportunity ---

ADMINISTRATIVE LAW JUDGE: Excuse me, sir, have you finished with Dr. Fishman?

MR. BERGER: Yes.

ADMINISTRATIVE LAW JUDGE: Do you think we may excuse him?

MR. BERGER: Yes.

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ADMINISTRATIVE LAW JUDGE: Dr. Fishman, you're excused. We'll have a recess to permit you to gather up your papers.

(At this period a recess was declared.)

ADMINISTRATIVE LAW JUDGE: The hearing will be resumed. Let the record show that Dr. Fishman has left the hearing room. Mr. Berger, you were saying something.

MR. BERGER: I want to renew my application to bring in a medical witness on behalf of the plaintiff to show his disability period which is at issue at this point and which is at issue due to his Honor's instance and his recollection of the record making it necessary for me to repeat my application to bring in a doctor, a specialist, after an examination of Mr. Buturla at this time.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I expect to have a transcript of the entire hearing before writing my recommended decision so that, if my memory failed me, the record will show that it has.

MR. BERGER: Well, what is that? What is the answer to my application?

ADMINISTRATIVE LAW JUDGE: Well, you make the point that, due to my failure to recall the testimony of Dr. Frank,

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you are making this application.

MR. BERGER: That's correct.

ADMINISTRATIVE LAW JUDGE: And I'm saying that the testimony of Dr. Frank will be seen by me prior to writing my recommended decision, so I will have no failure or I will not lack knowledge of what Dr. Frank testified.

MR. BERGER: Well, on the alternative, you have disregarded what Dr. Frank has brought out in view of your pointed questions to Dr. Fishman.

ADMINISTRATIVE LAW JUDGE: I believe that the dysfunctions I asked Dr. Fishman to assume are less severe than the ability to perform various physical activities that Dr. Frank thought that Mr. Buturla was able to do at the time of his examination recently. If I come up with an invalid recommended decision, which is contrary to the interests to Mr. Buturla, you could point out to the Appeals Council and, if necessary, to the District Court Judge where I erred.

MR. BERGER: Yes, but at the present time, we know exactly where you stand in view of your questioning of Dr. Fishman where you connected an ability to work from December 11, 1969 to June 15, 1972, and you pose a hypo-

-113-

thetical question including those facts which were not on this record but you chose to disregard the record so obviously. There is your state of mind which is quite on the record now, clearly so.

ADMINISTRATIVE LAW JUDGE: I don't know how you could interpret what appears to be "bias" on my part, according to your way of thinking.

MR. BERGER: Not bias. You've come to your conclusion.

ADMINISTRATIVE LAW JUDGE: I've come to a conclusion as to certain dysfunctions that I think the record establishes that Mr. Buturla had during the critical period. I assume the physician you intend to send Mr. Buturla to would be an orthopedist or an orthopedic surgeon. Is that right?

MR. BERGER: Right.

ADMINISTRATIVE LAW JUDGE: And he's going to examine him after Dr. Frank examined Mr. Buturla. And Dr. Frank was unable, as I recall, to state with any definiteness whether Mr. Buturla's physical activities were more or less restricted than he found at the time of his examination; so, I don't understand how any other orthopedist can do better.

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MR. BERGER: Well, what have you based your question on to Dr. Fishman?

ADMINISTRATIVE LAW JUDGE: I've based it on the medical reports which I saw in the file, sir.

MR. BERGER: And according to your opinion, on those medical reports, regardless that he was out on -- he was totally disabled in the Police Department -- you have posed a question to this Dr. Fishman that he could work.

ADMINISTRATIVE LAW JUDGE: Mr. Berger ---

MR. BERGER: So you have arrived at your conclusion.

ADMINISTRATIVE LAW JUDGE: Mr. Berger---

MR. BERGER: You have arrived at your decision.  
You're not considering it on the record.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I have concluded that Mr. Buturla was unable to do police duties and that's all the Police Department found. Isn't that so?

MR. BERGER: Would you want him to violate the rules and regulations of the Police Department and work - which you don't know if he could work or couldn't work? Does it still mean he could work?

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I don't want anybody to violate any regulations. I don't find that your

-115-

application for another examination at this time ---

MR. BERGER: Oh, yes, it's very important.

ADMINISTRATIVE LAW JUDGE: -- to have another hearing  
in order to listen to the testimony of a physician, who  
hasn't as yet examined Mr. Buturla, meritorious.

MR. BERGER: I didn't say he hasn't -- there would  
be a repeat examination.

ADMINISTRATIVE LAW JUDGE: Am I assuming you are  
talking either about Dr. Briggin or Dr. Bosworth?

MR. BERGER: Well, I'm hopeful, although I know  
Dr. Bosworth -- I was just informed by his office that he  
retired. And the other one - Dr. Briggin - was supposed  
to be on a vacation. I called his office today and found  
out he was not on vacation. Now, if you want to take  
advantage of the petitioner --

ADMINISTRATIVE LAW JUDGE: Mr. Berger, this case was  
remanded to me on April 9, 1973. On the 12th I sent a letter  
to you asking for up-to-date medical information. I had  
to follow-up that letter twice on May 1 and on May 9 before  
you even responded. Later on, I suggested to you in another  
letter, my letter of September 7, to let me know what witnesses  
you intended to call at this hearing. You didn't say that

-116-

you definitely were going to call Dr. Briggan or Dr. Bosworth. You said you were going to try. Well, you had plenty of opportunity to make that effort.

MR. BERGER: You're disregarding my opportunity, aren't you? You're disregarding the facts - the record that I have just explained to you, and you don't care and wash it out regardless.

ADMINISTRATIVE LAW JUDGE: What facts have you explained?

MR. BERGER: I told you, Dr. Bosworth retired. I cannot get Dr. Bosworth. Dr. Briggan, for some reason or other, had an operation about six months ago - had a heart ailment - and he's very reluctant to come to any hearing. I called his office to come here and his office told me last week that he was on vacation. I called today and they advised me he wasn't on a vacation, so obviously this is the type of problem that I have. You want to say you don't recognize the problem; that's up to you to say it, but that's the problem.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I'm denying your application for a continuance of this hearing in order to hear live testimony from a medical witness.

MR. BERGER: All right.

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ADMINISTRATIVE LAW JUDGE: Now, do you have any other evidence you wish to produce?

MR. BERGER: I have no other evidence.

ADMINISTRATIVE LAW JUDGE: Now, you have a right, before I get to work on my recommended decision to the Appeals Council, to submit to me proposed findings of fact and conclusions of law, and you may do so orally at this time or in writing at a future date. May I know what your pleasure is?

MR. BERGER: I'll make a statement now.

ADMINISTRATIVE LAW JUDGE: And do you intend submitting anything in writing?

MR. BERGER: No.

ADMINISTRATIVE LAW JUDGE: Okay, sir, you may make your summation.

MR. BERGER: So far as the record --- The medical record from the Police Department states that he's totally disabled from December 11, 1969 to June 15, 1972. This is based on medical reports of doctors of high reputation in the State and City of New York and is further based on the fact that, through a rigorous examination, they discharged him on 3/4s - that is, the Police Department - on the basis

-118-

of a total disability. Now, you are confining that total disability to police work. There is nothing in any of those reports that confine it - from Dr. Bosworth or Dr. Briggan or any of the doctors who examined him - just to police work. When they said he was totally disabled, he was totally disabled from light work in the Police Department which he tried to do four days which was desk work, sitting down, standing up, walking around and pushing and pulling, bending, but he was unable to do that work; so that they gave him a 3/4s discharge and, as a matter of law and as a matter of the medical record here - by Dr. Frank who also verified on the record here today - that this man was totally disabled from December 11, 1969 to June 15 of 1972. He was totally disabled and partially disabled from June 15 to the present time - to date. Based on your own witness's statement, based on the entire record which you have chosen to disregard, by your pointed questions to your witness, Dr. Fishman, that he could hypothetically do work from 1969, getting up from the table, sitting down, moving, pushing and pulling and all of these things you have brought out which the Police Department has already stated as a matter of fact and a

-119-

matter of investigation that he could not do.

ADMINISTRATIVE LAW JUDGE: Have you finished, sir?

MR. BERGER: I have finished.

ADMINISTRATIVE LAW JUDGE: Mr. Berger, I will write a recommended decision. I will mail a copy to Mr. Buturla at his home. I will mail a copy to you at your office. In addition, I will mail you a complete transcript of the hearing today so that you may have it for future use.

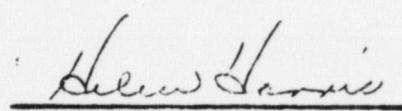
MR. BERGER: All right, thank you.

ADMINISTRATIVE LAW JUDGE: You're welcome. Thank you, very much. The hearing is now closed.

(The hearing closed at 4:55 p.m. on October 24, 1973)

C E R T I F I C A T I O N

I have read the foregoing transcript and hereby certify that it is a true and complete record of the hearing.

  
Helen Harris  
Hearing Assistant

Entry 106

NYC POLICE DEPARTMENT  
MEDICAL UNIT

## HONORARY POSITION OF THIS REPORT

DUPPLICATE CARD - DISTRICT SURGEON SAVINO  
ON 150-71

Pt. I. Douglas J. Burturle 17150 May 2  
Rank Name Shield Command

RELEASER TO : Henry Briggan Date \_\_\_\_\_

Date of Appt. 1-11-71

DIAGNOSIS: Ligamentous strain of the dorsolumbar spine, contusion to right lower ribs, nerve root pressure, low lumbar on the right.

**TREATMENT OR OPERATION** The patient still complains of pain in his lower back with radiation down the right lower extremity. At times, the pain is aggravated on deep breathing.

**EXAMINATION:** still ungrasses with some difficulty. Restricted trunk movements. Loss of tone of the right buttock two plus. REDFICKED straight leg raising on the right. Diminished sensory. No weakness of dorsiflexion of the great toe.

### PROGNOSIS

To have new x-rays and for re-examination with Dr. Bosworth. Put on tablets, Norflex -- one twice daily.

**Department of Health, Environment & Welfare  
Bureau of Education and Cultural Affairs**

MAY 2 1973

60 Federal Plaza, Rm. 311  
New York, New York 10006

**EXHIBIT... 27**

**NYC POLICE DEPARTMENT  
MEDICAL UNIT**

**HONORARY POLICE SURGEON'S REPORT**

DUPLICATE MAILED TO DISTRICT SURGEON SAVINO  
ON 6-16-71

|                                 |        |         |
|---------------------------------|--------|---------|
| Ptl. <u>Douglas J. Burturla</u> | 17150  | Mcy 2   |
| Rank <u>Name</u>                | Shield | Command |

REFERRED TO DR. Henry Briggan Date \_\_\_\_\_

Date of Appt. 6-7-71

DIAGNOSIS Ligamentous sprain of the dorsolumbar spine; contusion to right lower ribs, nerve root pressure, low lumbar on the right. probable herniated disc low lumbar on the right.

TREATMENT OR OPERATION Condition remains unchanged. Still complaining of constant pain in his lower back with radiation down the right lower extremity.

RECOMMENDATIONS Restricted trunk movements, pain on straight leg raising, three plus Lasagne on the right, two plus left contralateral. Diminished sensory in right lower extremity. Diminution of the right knee jerk still present.

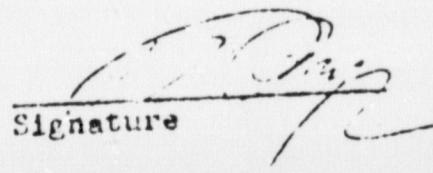
PROGNOSIS Observation.

Department of City of New York  
Bureau of Health Administration

MAY 2 1973

66 Federal Plaza, Rm. 311  
New York, New York 10007

Signature



NYC POLICE DEPARTMENT  
MEDICAL UNIT

## HONORARY POLICE SURGEON'S REPORT

DUPLICATE MAILED TO DISTRICT SURGEON SAVINO  
ON 10-21-71

Pt. No. 145-1-Battista      17150      May 2  
Rank Name Sgt. Schild      Command

REFERRED TO DR. Henry Brizzi      Date \_\_\_\_\_

Date of Appt 10-14-71

DIAGNOSIS      Lumbago sprain of the dorsolumbar spine; contusion to right lower back; nerve root pressure, low lumbar on the right, probable herniated disc low lumbar on the right.

TREATMENT      Still complains of pain with radiation down the right lower extremity accompanied by numbness. Occasional tingling sensation in the right foot. Pain aggravated in trunk movements and on flexion of the neck.

RECOMMENDATIONS      EXAMINATION: Still stands with a slight forward list. Restricted trunk movements. Positive Lasègue's bilaterally left & right contralateral diminution of right knee jerk. Slight diminution of dorsiflexion of the great toe. Diminution of sensory in right lower extremity.

PROGNOSIS      The patient remains under observation. He wishes to defer any operation at this time.

Department of Police Medical Services  
City of New York

MAY 2 1973

26 Federal Plaza, Rm. 313  
New York, New York 10007

Signature

B.R. RV

NYC POLICE DEPARTMENT  
MEDICAL UNIT

## HONORARY POLICE SURGEON'S REPORT

DUPLICATE MAILED TO DISTRICT SURGEON SAVINO  
ON 6-1-72

|                                 |               |                |
|---------------------------------|---------------|----------------|
| Ptl. <u>Douglas J. Burturla</u> | <u>17150</u>  | <u>May. 2</u>  |
| Rank <u>Name</u>                | <u>Shield</u> | <u>Command</u> |

REFERRED TO DR. Henry Briggan Date \_\_\_\_\_Date of Appt 4-10-72

DIAGNOSIS Ligamentous sprain of the dorsolumbar spine; contusion to right lower ribs; nerve root pressure, low lumbar on the right, probable herniated disc low lumbar on the right.

TREATMENT OR OPERATION Condition remains unchanged except for radiating pain down his right calf, foot and ankle when crossing his knee. Still feeling of pressure in low back, occasional numbness of the right lower extremity. He has lost about fifty pounds in the past few months..

RECOMMENDATIONS Still stands with a slight forward list, restricted trunk movements, tenderness over the lumbosacral spine, diminished sensory in right lower extremity, still slight weakness of dorsiflexion of the great toe on the right, two plus Lasegue on the right and one plus contralateral.

PROGNOSIS

The patient remains under observation.

Department of Police, Bureau of Medicine  
Letter of Treatment & Diagnosis

MAR 2 1973

ES Federal Plaza - 100 Broadway  
New York, N.Y. 10007  
(212) 537-1000



HENRY DRIGGINS, M.D., F.A.C.S.  
25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301  
GIBRALTAR 7-3368

April 13, 1972

Morton Berger, Esq.  
555 Fifth Avenue  
New York, New York

Re: Douglas J. Euturia  
Inj: 12-10-69

Dear Mr. Berger:

The above patient has been under my care from 12-10-69 to the present date for a herniated disc.

The patient wishes to defer surgery for the present. He has not completely responded to conservative treatment and is awaiting further re-evaluation.

Very truly yours,

Henry Driggins, M.D.

HB:rdk

5/11/72 - INTERVAL HISTORY: Negative, for day heat, injuries, operations, illness, or immobilization. He was on sick report, on 1/1/72, when I saw him, and has remained on sick status, and has done no work.

He has pain in the low back, radiating right lateral aspect, right lower extremity

++ Motion  
++ protection  
+ shift Lt in flex  
++ Las Lt  
++ Las Lt Contra  
++ Ad Lt  
++ Sens Lt L S Lt

(see diagram)

5/11/72 - continued

radiating to the knee, and sometimes down into the foot. Pain is increased by cough.

X-rays, AP and lateral only, 5/11/72, PBNY, #41408, show a slight narrowing at lumbar 4 interval, and slight imbrication on changes in facets between lumbar 4 and 5.

Medical Board Police Pension Fund report, 1/19/72 with essentially negative findings reviewed and considered in our opinion below.

In the present x-ray review, note that there is some question as to the continuity of the superior facet of lumbar 5, this at lumbar 4, disc interval.

On total examination, lumbosacral and lower extremities, referable he shows:

- ++ limitation of flexion.
- + shift to left unattempted flexion.
- moderate protection.
- ++ weakness dorsiflexion right hallux.
- ++ decrease right ankle jerk.
- +++ decrease right knee jerk.
- ++ decrease sensation lumbar 5 nerve root downwards on the right.
- +++ laseque on the right.
- ++ laseque on the left, with contralateral right pain.

To have a full primary lumbosacral series with obliques, and return.

Pending return, check facets, check superior facets at lumbar 5 and disc interspace. DMB

*A. J. Newell M.D.*

Exhibit No. 28-41-1

|                   |            |           |          |                         |
|-------------------|------------|-----------|----------|-------------------------|
| SCENARIOS         | FIRST NAME | LAST NAME | INITIALS | DATE OF REQUEST         |
| PICTURES          | DOUGLAS    | COMPTON   | J. S. AS | 11/12/73                |
| BOOKS             | 19150      | INC 42    |          | IN PERSON<br>OR BY MAIL |
| ARTICLES          | 19150      | INC 42    |          | YES<br>NO               |
| PATENTS           | 19150      | INC 42    |          | RIGHT<br>LEFT           |
| <i>War War II</i> |            |           |          |                         |

NATIONAL HISTORY AND SCIENCE LIBRARY

GENERAL INFORMATION  
INC 42 LUMBO-SACRAL ANGUS.  
SITTING POSITION.

G.S.

ALL INFORMATION REQUIRED

*11-405* 11-405 Jan 1973  
REQUEST FOR PHOTOGRAPHIC STUDY

REF ID: A601260  
Department of Defense, Defense & Welfare  
Bureau of Defense Research

MAY 2 1973

BEST COPY OBTAINABLE

EG Federal Plaza Annex  
New York, New York

5/16/72 On review this date with new x-rays, situation remains the same as of 1/11/72.

X-rays dated 5/16/72, FDNY, #41457, showing the lumbar spine primary series plus obliques shows the definite narrowing of lumbar 4 interspace, especially appreciable in the oblique views, and imbrication of the facets between lumbar 4 and 5 also best in oblique views.

DIAGNOSIS: Still remains lacerated disc, lumbar 4.

DURR & FINE, DOUGLASS

5/16/72 - continued

Relationship to injury: If indeed the x-rays taken at Doctors Hospital, on December 28, 1969, were negative, and they are now positive, it would be difficult to deny relationship of present situation to the injury of 12/10/69.

Our advice has been for surgical repair with exploration of lumbar 4, and 5, on the right and midline, and fusion of lumbar 4 to sacrum. This would still be justified if the patient would accept it, and if complaints are severe enough to warrant it in his opinion.

On our present examination, restricted duty status, would seem possible, but there might be periods of aggravated pain when it was not. DMB

*D. Durr & Fine*

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|   |                              |                            |                          |                 |                        |
|---|------------------------------|----------------------------|--------------------------|-----------------|------------------------|
| SURNAME<br><u>BUTURLA</u>                                 | FIRST NAME<br><u>Douglas</u> | GRADE<br><u>PTL 117150</u> | COMMAND<br><u>MCR2</u>   | AGE<br><u>5</u> | DATE<br><u>5/16/72</u> |
| PART OF BODY TO BE X-RAYED<br><u>X / S spine - series</u> |                              |                            | INJURED IN LINE OF DUTY? | YES<br>NO       |                        |
| MEDICAL HISTORY (Check symptoms and duration)             |                              |                            | RIGHT LEFT               |                 |                        |

CLINICAL DIAGNOSIS

Hypertension

PROBLEMS RELATED TO THIS

MMY 2.1973

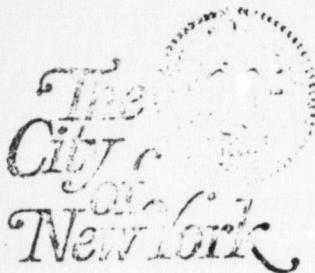
41457 Dr. Lawrence

REQUEST FOR RADIOGRAPHIC STUDY  
(OVER)

EE Federal Bldg  
New York  
M.R. 24 (Rev. 7-60)

BEST COPY OBTAINABLE

P.O. 120



POLICE DEPARTMENT 275

NEW YORK, N.Y. 10013

MAY 1, 1973

Department of Health, Education & Welfare

Local Government Division

26 Federal Plaza, Room 3138  
New York, N.Y.

Re: Douglas Puturla  
S.S. 140-52-5420  
D/A 12/10/69

Gentlemen:

In accordance with your request dated April 12, 1973 we are forwarding the following medical information concerning Patrolman Douglas Puturla.

Copies of reports from honorary Consultants:

Mr. Henry Brizman, Orthopedist - 1/11/71; 4/7/71; 10/14/71;  
4/10/72

Dr. David Loworth, Orthopedist - 5/11/72 & 5/16/72 -  
X-ray report - 5/11/72 & 5/16/72

The officer was examined on May 24, 1972 by a Medical Board Police Pension Fund article 2 which found him physically unfit for the performance of police duty, by reason of Discogenic Disease. The officer was granted a certificate of Accident disability on June 15, 1972.

Very truly yours,

*Stephen H. McCay, M.D.*  
Stephen H. McCay, M.D.  
Chief Surgeon

rej  
enclosure

Department of Health, Education & Welfare  
Bureau of Hospitals and Agencies

MAY 2 1973

26 Federal Plaza, Rm. 3138  
New York, New York 10007

EXHIBIT 29

[Letterhead of Staten Island Medical Group]

August 28, 1973

Joseph J. Oliva, M.D.  
Chief Medical Consultant  
Bureau of Disability Determinations  
Two World Trade Center  
New York, New York 10047

Re: Douglas Buturla  
a/c #140-32-5420  
Notchart # given

Dear Doctor Oliva:

I examined this 30 year old former patrolman in my office on August 16, 1973. In December, 1969, he was in a car which was struck by another car. He injured his chest but the pain there has more or less disappeared. He also injured his back and right hip. He has continued to have pain in his back and occasionally down the whole spine since then. At times, this is sharp pain or fiery pain running from his scapula down the entire back. The pain in the right leg is present at all times. He has been treated by Dr. Briggin with heat and portable traction. He has seen Dr. Bosworth on several occasions and DR. Bosworth has suggested surgery. However, he has seen so many physicians that he is confused and scared of any operation. He worked for awhile at a sedentary job with the Police Department but found that he could not even sit in one position for any period of time and he was finally retired from the job on June 15, 1972. He has no plans for the future, as to attempting any type of work, including sedentary work. He has heard of an injection of something similar to papaya leaf for dissolving discs and is willing to try this although he is reluctant to attempt surgery.

On examination, he is tall and husky. His height is 71". He weighs 200 lbs. He wears a corset support but he moves fairly briskly and he removes his trousers readily while standing. He is extremely tense and perspires freely from his palms and his axillae although the room is fairly cool. He has no limp. He stands on one leg with good stability. His left shoulder is held slightly higher than the right. His back muscles are supple but there is slight flattening of the normal lumbar lordosis. The neck muscles are supple and there is full motion of the neck. There is full motion of the upper extremities. At the back, he can flex 40 degrees, extend 5 degrees and has right and left lateral motion of 10 degrees. I feel this represents some degree of voluntary limitation rather than a true range that is possible. He allows 45 degrees of straight leg raising on the left and 10 degrees on the right. Arm reflexes are normal. The left knee jerk is 2f. The right knee jerk is obtained with normal amplitude and the right ankle jerk is of somewhat diminished amplitude. Pulses in the legs are normal. Motion of all lower extremity joints is normal. The right thigh and the right calf measure about 1/4" more than the left in circumference although there is no noticeable edema. He has hypesthesia of the entire right leg, from the toes to the groin without any relation to either peripheral or segmental nerve distribution.

Exhibit No. 30 (2 Pages)

Douglas Buturla  
A/C #140-32-5420

Page 11.

August 28, 1973

X-rays: X-rays of the chest and of the lumbo-sacral spine dated June 11, 1973 are submitted. They are of poor technical quality but show no specific abnormality. No definite narrowing of any of the lumbar interspaces is noted on these x-rays.

- Diagnosis: 1) History of chest injury, no objective or subjective residuals.
- 2) History of low-back injury, probable mild, right lumbar neuropathy. Considerable psychogenic overlay and hysterical anesthesia of right leg.

It is unfortunate that patient has little insight into his difficulties. There is a certain degree of back strain and right lumbar neuropathy but no more than is found in many people who are at work on full time. The basis for his present difficulties and inability to move is mainly psychogenic. It is nevertheless real and he needs some psychiatric support if he is not to become invalided at an early age.

Very truly yours,

[Sgd] Herman I. Frank  
Herman I. Frank, M.D.

HIF:st

## PROFESSIONAL

278

LATIONS

1. Physician's Name Frank  
(Last) Herman  
(First)   
(Middle)

2. Address 307 Victory Blvd.  
Staten Island, New York 10301

3. Year of Birth (B): 1916

4. Medical Education (ME): State: New York

School: Cornell University Medical College, New York

Year of Degree: 1940

5. Year of License (L): 1940

6. American Specialty Boards (AB): American Board of Orthopaedic Surgery

7. Medical Specialties: Orthopaedic surgery

8. Type of Practice (TOP): Full-time specialty

9. National Scientific Medical Societies (SS): American Academy of Orthopaedic Surgeons;

International College of Surgeons; American College of Surgeons

10. Professorial Appointments (PA): State:

School:

Title & Current Status:

11. Other Information (e.g., Hospital Appointments):

12. Sources of Information: American Medical Directory

Year: 1969 Edition: 25th Page: 2892

Other Sources:

Exhibit No. 31

279

HENRY ERICKSON, M.D., F.A.C.S.  
23 EAST 75TH AVENUE  
STATEN ISLAND, N.Y. 10301  
Globe 4-7-3169

June 18, 1973

Norton Berger, Esq.  
555 Madison Avenue  
New York, N.Y. 10017

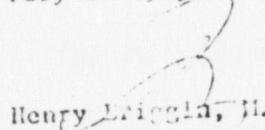
Re: Douglas J. Buturla  
Inj: 12-10-69

SUPPLEMENTARY REPORT

Dear Mr. Berger:

Douglas Buturla has received his radical discharge from the Police Department as a result of the injuries he received in the accident of December 10, 1969. As long as he does not do police work and confines himself to sedentary employment, a laminectomy may not be necessary.

Very truly yours,

  
Henry Erickson, M.D.

HB: rdk

32  
exhibit no. \_\_\_\_\_

Tel. No. 264-3815

26 Federal Plaza, Room 3138  
New York, New York 10007  
September 14, 1973

Dr. Sidney Fishman  
200 Cabrini Blvd.  
New York, New York 10033

Dear Dr. Fishman:

The case of Douglas Buturla, social security account number 140-32-5420, was remanded by a Judge of the United States District Court for a supplemental hearing with respect to his disability claim.

It is expected that the hearing will be held on October 3, 1973 at 3:00 p.m. in Room 3138 of the Federal Building, 26 Federal Plaza, New York, New York. You are requested to appear at such time and place to present testimony as a vocational expert.

Transmitted herein are the following:

1. Copies of documents which were received in evidence at the hearing held on May 24, 1971 together with a list thereof (exhibits 1 to 26, inclusive).
2. Copies of additional documents tentatively selected for inclusion in the record in the case together with a list thereof (exhibits 27 to 32, inclusive).
3. Copy of the transcript of the hearing held on May 24, 1971.

All the facts currently available with respect to the claimant's age, education, vocational experience and impairments, as well as his complaints and allegations, are reflected in the aforesaid documents. You are requested to familiarize yourself with the contents of these documents and to bring them to the hearing.

The administrative law judge would like to have you present for

Exhibit No. 23 (21P-5420)

-2-

the purpose of testifying as a vocational expert. You may expect to be called upon to testify on the basis of the enclosed documents as well as any additional documents and oral testimony that may be offered at the hearing. If you feel that further pre-hearing documentation would be necessary (for the purpose of giving testimony as a vocational expert), please advise me immediately.

You probably will be the last witness to be heard. As of this writing, it is expected that the witnesses who will precede you will be Dr. Herman I. Frank, who examined the claimant on August 16, 1973, the claimant and, possibly, a physician appearing on his behalf. You may expect to be called upon to testify as to what jobs, if any, the claimant was able to perform as of the critical period, by virtue of his education, past training and experience; and the extent to which such jobs exist in the economy. The critical period in this case commenced on December 10, 1969 and it extends to the date of the hearing. While it is not your responsibility to determine what disability, if any, the claimant may have, you should be prepared to give testimony based on assumptions of fact concerning the entire range of evidence.

You will be requested to furnish the rationale and supporting reasons in detail for your opinions. Questions may be asked of you by the claimant's attorney as well as by the undersigned. You will not be expected to testify as to whether or not the claimant is disabled since, under the pertinent provisions of the Social Security Act and regulations promulgated thereunder, the administrative law judge has the responsibility for deciding this ultimate issue.

It is requested that you complete and sign the enclosed acknowledgement, and return it to the undersigned at your earliest convenience. If you are unable to appear to testify at the time and place set forth above, please notify the administrative law judge immediately.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

Enclosures

|  |  |                             |
|--|--|-----------------------------|
| TECHNICAL AND/OR PROFESSIONAL<br>SERVICES CONTRACT | Appropriation Allocation 1973 (item 1021cc)<br>750,000- (41) 11 - 620 , 1973 (item 1021) | Contract No.<br>SCH-73-0143 |
|--|--|-----------------------------|

1. The Department of Health, Education, and Welfare, Social Security Administration hereby contracts for the services of

Mr. Sidney Fleischman

Residence address is the contractor subject to his contract. No address.

Nature of Services to be rendered by the contractor is as follows: (Specify all services to be rendered and equipment and supplies furnished)

1. As requested, for appearance in cases before the Bureau of Hearings and Appeals as an expert witness in Title IV, Federal Coal Mine Health and Safety Act; and Title II, disability, Social Security Act hearings in order to testify as to his opinion of whether or not a claimant can work, and if so, what classes of work he can do and what jobs he can perform in the light of his background and impairment. \$100 for the first appearance, and \$25 for each additional appearance in the same day, whether or not during or following.
2. For examination and review of the official records of (a) a remanded case, \$50 per case; (b) other than remanded cases, \$15 per case; (c) for study, evaluation, and written comments on additional medical evidence in a case for which a fee was previously charged-\$25; (d) reasonable cost for long distance telephone calls for purpose of verifying pertinent vocational information contained in a survey report of businesses and industries, such survey reports having been prepared by other than the contractor, provided that the fee and cost of long distance telephone call will not be payable if the contractor fails to appear when requested, at the scheduled hearing on the case.
3. As requested and authorized by the Bureau, for a survey of businesses and industries in a designated area for the purpose of developing pertinent vocational information, including the functional requirements of each job, (a) for planning the survey and scheduling visits-\$15 per survey; (b) for actual plant visitations and data collections-\$75 per day, as authorized; (c) for compilation of data and preparation of a final report-\$75 per survey, provided that no fee shall be payable until the final report is received and accepted by the Bureau.
4. For examination as requested, for not more than one day at any one time, at a general Title II, Disability, and/or Title IV discussion with representatives of the Bureau of Hearings and Appeals, \$50.

| The above services will be rendered in |                        | CITY  | STATE  |
|--|------------------------|---|--|
| 2. Period of Contract                  | From 7-1-73 To 6/30/73 | Location to be determined by the Hearing Examiner |  |
|  |                        | 3. Fee  | <input type="checkbox"/> Included travel<br><input checked="" type="checkbox"/> Plus travel in accord. with<br>Std. Govt. Tr. Reg. |
|  |                        | See each item above                               |  |

4. Qualifications:

a. Physicians and Dentists - The contractor certified that he graduated from a duly accredited school of medicine in the year \_\_\_\_\_ and is licensed to practice in the State of \_\_\_\_\_

b. Other Professionals - The contractor certifies that he is professionally or technically qualified as indicated in the following brief statement of training and experience:

Medical Doctor

|  |   |            |
|--|---|------------|
| 5. Contractors Agreement: The undersigned hereby agrees to provide the services stated above in accordance with all terms and conditions of this contract. | SOCIAL SECURITY NUMBER                      | DATE       |
| John T. Fleischman<br>Medical Doctor and Dentist   | 152-28-1267                                 | 7/1/73     |
| 6. Contracting Officer (Signature)   | CITY AND STATE                              | DATE       |
| John T. Fleischman, M.D.   | NY 2146                                     | 7/1/73     |
| 7. Approved by the Government  | 7. DATE                                     | 7. DATE    |
| John T. Fleischman<br>Deputy Director, OSH   | John T. Fleischman<br>Program Director, OSH | 7/1/3-1973 |
| 8. Signature   | NAME  | DATE       |
| John T. Fleischman   | Deputy Director, OSH                        | 7/1/3-1973 |

(See conditions on reverse)

Exhibit B- 24 (6 pages)

James J. O'Leary  
240 Madison Avenue  
Baptist Hospital, New York City

Tel. REN. 014-3333

Bus. 212-342-9000

Married, one child

Education: College of the City of New York-B.A.-Major-Education  
Teachers College, Columbia Univ.M.A.-Speech Education  
New York University, School of Education-Ed.D. in  
Vocational Rehabilitation

Employment:

October, 1964 to Present-Director of Rehabilitation Services  
Federation of the Handicapped

In Director of Rehabilitation Services for the Agency's diversified programs for serving the physically disabled, the mentally ill, the mentally retarded, and the drug addicts, administer and coordinate all professional and support services which include counseling, work evaluation, placement, work, medical and psychiatric consultation, group work and recreation, psychological testing, vocational instruction, remedial classes, and remunerative work activities.

Recruit and engage professional staff of over fifty members at the supervisory and operating levels as well as clerical personnel.

In cooperation with the faculties of the City University, New York University, Teachers College, Columbia University, and Rutgers University, coordinates the counselor and work therapy training program in the facility and provide programs for over 30 undergraduates. Encourages visiting graduate classes from the above universities and other training programs about the Agency's services.

Through supervisory staff, develop and maintain case work standards and practices and conduct in-service training. For such programs, collect and acquire professional literature to be used by staff and which is maintained in the facility's library.

Prepared initial and continuation research and demonstration grants requests to the Social and Rehabilitation Services,

the Office of Mobility, Transition, and Mobility, and to the Division of Vocational Rehabilitation.

Assist the Division of Mobility, Transition, and Mobility, and the Division of Vocational Rehabilitation in developing policies and procedures for all programs and services, including applications for work trip experiences and transitional work experiences for sheltered and nonsheltered individuals.

Develop and maintain contacts, appear at professional meetings, and attend Agency policy and function meetings; serve on mobility and transition committees in the community; assist in joint programs with the Division of Vocational Rehabilitation and the Commission for the Blind and Visually Handicapped as well as other rehabilitation programs in the community.

May 1966 to September 1964-Associate Rehabilitation Counselor  
New York State Education Department,  
Division of Vocational Rehabilitation

As an Associate to the Director Supervisor, shared office-wide supervision of eight rehabilitation counselors and twelve employees serving the physically and emotionally handicapped. Planned, scheduled, and conducted orientation and in-service training programs for both new and experienced professional staff.

Developed and maintained casework standards and procedures and negotiated cooperative working relationships with medical and rehabilitation facilities in the community.

Developed and maintained community rehabilitation resources including inclusive of medical and psychological panels as counselor working tools and guides.

Administratively reviewed and approved complex vocational rehabilitation programs involving large expenditures of state service funds.

In a public relations capacity, addressed interested groups and organizations to explain and interpret the Agency's program. Also, capacity, served on advisory committees to a number of rehabilitation programs in the community.

Assisted in the review of special programs to the National Organization of Vocational Rehabilitation to develop, suggest, and evaluate program needs in the Vocational Compensation Program and Vocational Rehabilitation for serving the disabled disabled.

September 1964-August 1962-Training Instructor, Graduate School of Social Work, Columbia University  
New York City, New York

Participation in occupational information, conducting in community guidance, principles and techniques of rehabilitation, community resources in guidance.

May 1953 to May 1955- Director, Training Center and Sheltered Workshop, Association for the Help of Retarded Children

As Project Director conducting a research and demonstration project under Government grant, initiated and administered a workshop facility serving mentally retarded adults.

Selected site, directed equipping of shop and office space, recruited and supervised professional and clerical staff as well as shop supervisors and evaluators. Prepared budget for Board of Directors and assisted in establishing salary levels. Negotiated and established working relationships with public and voluntary agencies and by public appearances at meetings, interpreted Agency program and services. Participated in many training institutes and inter-professional conferences.

Developed and researched designed program, subsequently preparing findings for publication.

May 1951 to May 1955- Senior Rehabilitation Counselor, New York State Education Department, Division of Vocational Rehabilitation

Supervised a professional staff of eight counselors engaged in serving the physically and emotionally disabled. Trained new personnel, interpreted Division's policies, maintained casework standards by means of case reviews and conferences with counselors, approved case service expenditures, and kept fiscalical controls for the Unit. Annually evaluated staff.

Initiated and developed new programs of service in community rehabilitation facilities and addressed both lay and professional groups relative to the Division's program.

Co-coordinated with District Office administration in supervisory conferences designed to improve office procedures, casework standards and expedite services to the handicapped.

Aug 1956 to July 1958- Vocational Rehabilitation Counselor, New York State Education Department, Division of Vocational Rehabilitation

Provided vocational guidance and counsel to handicapped adults to enable them to achieve and maintain achievable vocational goals. Developed, arranged, and supervised training and physical rehabilitation programs. Contracted industry and effected job placements in competitive industry and sheltered workshops.

Worked in close cooperation with all types of community agencies in giving their full cooperation in supplementing services provided by the Division.

September 1964 to June 1966 (Avon)-English Teacher-Harlem Evening High School, New York City  
Taught English at all levels of English, New York City Board of Education.  
Taught classes at all levels in High School English.

March 1967-June 1968-Parole Officer-New York State Executive Department,  
Division of Parole

Supervised paroled felons from State prisons and reformatories and were given an adjustment to the community, family and employment. Initiated the cooperation of community agencies in effecting the rehabilitation of these offenders. These included, executed warrants for the apprehension of parole violators and required such parolees to penal institutions.

Conducted pre-parole investigations and prepared extensive reports covering legal and social histories and prospective parole programs including home and employment plans.

October 1968 to February 1971-Supervisory AIDS and Social Investigator,  
New York State Temporary Employment  
Relief Administration

Supervised twelve social investigators; assigning cases for investigation. Reviewed reports submitted by workers and made upon recommendations for databases.

Interpreted Agency policy and procedures to staff and citizens. Prepared staff evaluation reports at regular intervals.

As social investigator, conducting field investigations of clients, checking files. Cooperated with community agencies in carrying out community case records and controls.

#### PROFESSIONAL AFFILIATIONS:

National Rehabilitation Association-Past President, Metropolitan Chapter; Member, Executive Board

National Association of Rehabilitation Counselors-Past President, Region IV

American Personnel and Guidance Association

National Vocational Guidance Association-American Rehabilitation Council-Nash.

International Society for the Rehabilitation of the Hand.

Community Council of Greater New York-Presbyterian Board Member  
 Rehabilitation Committee  
 Chairman, Vocational  
 Facilities Committee  
 Office of Community Planning for  
 Vocational Rehabilitation - Chairman, Public Force for  
 Vocational Rehabilitation  
 National Multiple Sclerosis Society - Member, Executive Board,  
 Bronx Chapter

Advisory Committee Member to: New York Heart Association  
 Chestnut Cerebral and Mental  
 Rehabilitation for the Help of Research  
 Children-Mosbacher Clinic  
 Sidney Hillman Health Center

Publications:  
 Crowley, M. J. and Nathan H. Glazer-Jobs, Housing, Rehabilitation  
Disability Assessment and Rehabilitation  
and the Social Work Role, by Walter  
 P. O'Farrell, 1968.  
 Volume II, Number 1, July, 1968.

Glazer, Nathan H.-Training Standards and Opportunities for Vocational  
Rehabilitation Counselors in Private Sector, by Walter P. O'Farrell  
and Crowley, 1968.  
Counseling Division, Volume II, No. 1, July, 1968.

Glazer, Nathan H.-Family Rehabilitation and Disability of the  
Handicapped, by Walter P. O'Farrell, 1968.  
Disability Rehabilitation Program, by Walter P. O'Farrell  
and Crowley, Volume V, April, 1968.

Glazer, Nathan H.-Community Rehabilitation, by Walter P. O'Farrell  
and Crowley, Volume V, April, 1968.

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Tel. No. 264-3815

26 Federal Plaza, Room 3138  
New York, New York 10007  
September 25, 1973

Dr. Sidney Fishman  
200 Cebriini Blvd.  
New York, New York 10033

Re: Douglas Buturla  
A/N 140-32-5420

Dear Dr. Fishman:

On September 14, 1973 I requested your appearance at a hearing to be held in the above-referenced case at 3:00 p.m. on October 3, 1973. The hearing has been postponed to 1:30 p.m. on October 24, 1973. I trust that you will be able to appear at that time. It is requested that you complete and sign the enclosed acknowledgement and return it to the undersigned at your earliest convenience.

Very truly yours,

Samuel C. Berson  
Administrative Law Judge

Enclosure

EXHIBIT 35

HENRY BRIGGIN, M.D., F.A.C.S.  
25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301

GIBRALTAR 7-3388

Morton M. Berger, Esq.  
347 Madison Avenue  
New York, New York 10017

Page 1 of 5 pages

| DATE     | DESCRIPTION                 | CHARGE | PAYMENT | CURRENT BALANCE |
|----------|-----------------------------|--------|---------|-----------------|
| 12-10-69 | Hospitalization to 12-13-69 | 55 00  |         | 55 00           |
| 12-22-69 | OV & PT                     | 16 50  |         | 71 50           |
| 12-29-69 | OV & PT                     | 16 50  |         | 88 00           |
| 1-2-70   | PT                          | 6 50   |         | 94 50           |
| 1-5-70   | OV & PT                     | 16 50  |         | 111 00          |
| 1-7-70   | PT                          | 6 50   |         | 117 50          |
| 1-9-70   | PT                          | 6 50   |         | 124 00          |
| 1-12-70  | OV & PT                     | 16 50  |         | 140 50          |
| 1-14-70  | PT                          | 6 50   |         | 147 00          |
| 1-16-70  | PT                          | 6 50   |         | 153 50          |
| 1-26-70  | OV & PT                     | 16 50  |         | 170 00          |
| 1-28-70  | PT                          | 6 50   |         | 176 50          |
| 1-30-70  | PT                          | 6 50   |         | 183 00          |
| 2-2-70   | PT                          | 6 50   |         | 189 50          |
| 2-4-70   | PT                          | 6 50   |         | 196 00          |
| 2-6-70   | PT                          | 6 50   |         | 202 50          |
| 2-9-70   | OV & PT                     | 16 50  |         | 219 00          |
| 2-11-70  | PT                          | 6 50   |         | 225 50          |

Exhibit No. 36 (5 pages)

|                       |                  |                     |                   |
|-----------------------|------------------|---------------------|-------------------|
| CAST-CAST             | HC-HOSPITAL CALL | INS-OTHER INSURANCE | PT-PHYSIOTHERAPY  |
| COMP-COMPENSATION     | HV-HOUSE VISIT   | MED-MEDICARE        | ROA-RECD ON ACCT. |
| C-CONSULTATION        | IM-IN HOSPITAL   | NC-NO CHARGE        | S-SURGERY         |
| GHI-GROUP HEALTH INS. | INJ-INJECTION    | OV-OFFICE VISIT     | UMS-BLUE SHIELD   |

EXHIBIT 36

HENRY BRIGGS, M.D., F.A.C.S.

25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301

GIBRALTAR 7-3388

Morton H. Berger, Esq.  
 347 Madison Avenue  
 New York, New York 10017

Page 2 of 5 pages

Re: Douglas Burturla Inj: 12-10-69

| DATE    | DESCRIPTION | CHARGE | PAYMENT | CURRENT BALANCE |
|---------|-------------|--------|---------|-----------------|
| 2-16-70 | PT          | 6 50   |         | 232 00          |
| 2-18-70 | PT          | 6 50   |         | 238 50          |
| 2-20-70 | PT          | 6 50   |         | 245 00          |
| 2-25-70 | PT          | 6 50   |         | 251 50          |
| 2-27-70 | PT          | 6 50   |         | 258 00          |
| 3-9-70  | OV & PT     | 16 50  |         | 274 50          |
| 3-11-70 | PT          | 6 50   |         | 281 00          |
| 3-13-70 | PT          | 6 50   |         | 287 50          |
| 3-16-70 | PT          | 6 50   |         | 294 00          |
| 3-18-70 | PT          | 6 50   |         | 300 50          |
| 3-20-70 | PT          | 6 50   |         | 307 00          |
| 3-23-70 | OV & PT     | 16 50  |         | 323 50          |
| 3-30-70 | PT          | 6 50   |         | 330 00          |
| 4-1-70  | PT          | 6 50   |         | 336 50          |
| 4-3-70  | PT          | 6 50   |         | 343 00          |
| 4-6-70  | OV & PT     | 16 50  |         | 359 50          |
| 4-13-70 | OV & PT     | 16 50  |         | 376 00          |
| 4-15-70 | PT          | 6 50   |         | 382 50          |

CAST-CAST HC-HOSPITAL CALL INS-OTHER INSURANCE PT-PHYSIOTHERAPY  
 COMP-COMPENSATION HV-HOUSE VISIT MED-MEDICARE ROA-REC'D ON ACCT.  
 C-CONSULTATION IH-IN HOSPITAL NC-NO CHARGE S-SURGERY  
 GHI-GROUP HEALTH INS. INJ-INJECTION OV-OFFICE VISIT UMS-BLUE SHIELD

HENRY BRIGGIN, M.D., F.A.C.S.

25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301

GIBRALTAR 7-3388

Morton M. Berger, Esq.  
 347 Madison Avenue  
 New York, New York 10017

Re: Douglas Burturla

Page 3 of 5 pages  
Inj: 12-10-69

| DATE    | DESCRIPTION                | CHARGE | PAYMENT | CURRENT BALANCE |
|---------|----------------------------|--------|---------|-----------------|
| 4-17-70 | PT                         | 6 50   |         | 389 00          |
| 4-20-70 | PT                         | 6 50   |         | 395 50          |
| 4-22-70 | PT                         | 6 50   |         | 402 00          |
| 4-24-70 | PT                         | 6 50   |         | 408 50          |
| 4-28-70 | OV                         | 10 00  |         | 418 50          |
| 4-29-70 | PT                         | 6 50   |         | 425 00          |
| 5-1-70  | PT                         | 6 50   |         | 431 50          |
| 5-4-70  | OV                         | 10 00  |         | 441 50          |
| 5-11-70 | PT                         | 6 50   |         | 448 00          |
| 5-13-70 | PT                         | 6 50   |         | 454 50          |
| 5-25-70 | PT                         | 6 50   |         | 461 00          |
| 5-27-70 | PT                         | 6 50   |         | 467 50          |
| 6-9-70  | OV                         | 10 00  |         | 477 50          |
| 6-19-70 | Hospitalization to 7-10-70 | 220 00 |         | 697 50          |
| 7-14-70 | OV                         | 10 00  |         | 707 50          |
| 7-28-70 | OV                         | 10 00  |         | 717 50          |
| 9-8-70  | OV                         | 10 00  |         | 727 50          |
| 10-6-70 | OV                         | 10 00  |         | 737 50          |

CAST-CAST

COMP-COMPENSATION

C-CONSULTATION

GHI-GROUP HEALTH INS.

HC-HOSPITAL CALL

HV-HOUSE VISIT

IH-IN HOSPITAL

INJ-INJECTION

INS-OTHER INSURANCE

MED-MEDICARE

NC-NO CHARGE

OV-OFFICE VISIT

PT-PHYSIOTHERAPY

ROA-REC'D UN ACCT.

S-SURGERY

UMS-BLUE SHIELD

HENRY BRIGGIN, M.D., F.A.C.S.  
25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301

GIBRALTAR 7-3388

Morton M. Berger, Esq.  
347 Madison Avenue  
New York, New York 10017

Page 4 of 5 pages

Re: Douglas Burtula

Inj: 12-10-69

| DATE     | DESCRIPTION | CHARGE | PAYMENT | CURRENT BALANCE |
|----------|-------------|--------|---------|-----------------|
| 10-20-70 | OV          | 10 00  |         | 747 50          |
| 11-3-70  | OV          | 10 00  |         | 757 50          |
| 11-24-70 | OV          | 10 00  |         | 767 50          |
| 12-15-70 | OV          | 10 00  |         | 777 50          |
| 1-11-71  | OV          | 10 00  |         | 787 50          |
| 2-1-71   | OV          | 10 00  |         | 797 50          |
| 3-15-71  | OV          | 10 00  |         | 807 50          |
| 4-26-71  | OV          | 10 00  |         | 817 50          |
| 6-7-71   | OV          | 10 00  |         | 827 50          |
| 10-14-71 | OV          | 10 00  |         | 837 50          |
| 11-15-71 | OV          | 10 00  |         | 847 50          |
| 1-24-72  | OV          | 10 00  |         | 857 50          |
| 2-17-72  | OV          | 10 00  |         | 867 50          |
| 4-10-72  | OV          | 10 00  |         | 877 50          |
| 6-12-72  | OV          | 10 00  |         | 887 50          |
| 6-22-72  | OV          | 10 00  |         | 897 50          |
| 1-21-73  | OV          | 10 00  |         | 900 50          |
| 3-29-73  | OV          | 10 00  |         | 910 50          |

CAST - CAST

COMP - COMPENSATION

C - CONSULTATION

GHI - GROUP HEALTH INS.

HC - HOSPITAL CALL

HV - HOUSE VISIT

IH - IN HOSPITAL

INJ - INJECTION

INS - OTHER INSURANCE

MED - MEDICARE

NC - NO CHARGE

OV - OFFICE VISIT

PT - PHYSIOTHERAPY

ROA - REC'D ON ACCT.

S - SURGERY

UMS - BLUE SHIELD

HENRY BRIGGIN, M.D., F.A.C.S.

25 CENTRAL AVENUE  
STATEN ISLAND, N.Y. 10301

GIBRALTAR 7-3388

Martin M. Briggan, Esq.  
 347 Madison Ave  
 New York, NY 10017

Re: Diana Battaglia

Page 5 of 5 pages

| DATE   | DESCRIPTION | CHARGE | PAYMENT | CURRENT<br>BALANCE |
|--------|-------------|--------|---------|--------------------|
| 5-2-73 | 54          | 11.00  |         | 920.50             |

|                       |                  |                     |                   |
|-----------------------|------------------|---------------------|-------------------|
| CAST-CAST             | HC-HOSPITAL CALL | INS-OTHER INSURANCE | PT-PHYSIOTHERAPY  |
| COMP-COMPENSATION     | HV-HOUSE VISIT   | MED-MEDICARE        | ROA-RECD ON ACCT. |
| C-CONSULTATION        | IH-IN HOSPITAL   | NC-NO CHARGE        | S-SURGERY         |
| GHI-GROUP HEALTH INS. | INJ-INJECTION    | OV-OFFICE VISIT     | UMS-BLUE SHIELD   |

SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS  
P.O. BOX 2518  
WASHINGTON, D.C. 20013

## RESUME OF EXPERIENCE AND BACKGROUND

December 18, 1970

Date

Please print or type all entries. Attach  
extra sheets as needed. Submit in duplicate.

HOME PHONE: WA. 8-8959 (212) Social Security No. 152-22-1367  
(Area Code)

OFFICE PHONE: 679-3200, Ext. 3701

1. NAME Fishman Sidney Date of Birth May 28, 1919  
Last First Middle

2. MAILING ADDRESS 200 Cabrini Blvd.  
New York, N.Y. 10033  
(zip)

## 3. PRESENT EMPLOYMENT

Present Employer New York University Date of First Employment  
Institution or Firm 1947  
Senior Research Scientist  
Adjunct Prof. of Rehabilitation No. of Hours  
Your Position or Title Worked Per Wk. 30  
Director, Prosthetic-Orthotic Research & Education.  
Description of Your Duties Responsible for educational programs in prosthetic-  
orthotic rehabilitation for physicians and surgeons, therapists, prosthodontists,  
orthotists, and rehabilitation counselors; supervise interdisciplinary prosthetic-  
orthotic research programs including engineering, physical medicine, surgery,  
physiology and psychology; provide rehabilitation counselling to selected patients  
with physical handicaps.

4. PREVIOUS EXPERIENCE -- Begin with your earliest employment in psychological area  
and continue chronologically. Do not include minor positions. Use additional  
sheets if necessary.

|     | Position or Title    | Employed From | Employed To | Institution or Firm  |
|-----|----------------------|---------------|-------------|--|
| (a) | Vocational Counselor | 1939          | 1940        | Community Employment Service<br>Interviewed, tested and counseled clients of public guidance and placement<br>agency.  |
| (b) | Occupational Analyst | 1940          | 1941        | Employment Service<br>Performed job analyses, occupational composition studies and assisted in<br>revisions of the Dictionary of Occupational Titles. Prepared occupational<br>briefs. |
| (c) | Personnel Technician | 1941          | 1942        | Headquarters, 29th Division<br>Member of section which operated classification, assignment and testing<br>program for the Division.  |

Continued on attached sheet

EXHIBIT 37 (1 Page)

## a) Undergraduate

|                                 |        |                |               |
|---------------------------------|--------|----------------|---------------|
| College of the City of New York | B.S.   | June 1939      | Psychology    |
| Institution                     | Degree | Date of Degree | Major Subject |

## b) Graduate

| Institution         | Dates of Attendance  | Degree | Major Field         | Graduated |
|---------------------|----------------------|--------|---------------------|-----------|
|                     |                      |        | Vocational Guidance | Yes No    |
| Columbia University | Sept. 1939-June 1940 | M.A.   | Vocational Guidance | X         |
| Columbia University | Sept. 1946-June 1949 | Ph.D.  | Psychology          | X         |
|                     |                      |        |                     |           |
|                     |                      |        |                     |           |
|                     |                      |        |                     |           |
|                     |                      |        |                     |           |

PUBLICATIONS

list publications with journal references. - See attached listing

PROFESSIONAL RECOGNITION

American Association for the Advancement of Science  
 American Personnel and Guidance Association  
 National Vocational Guidance Assoc.  
 American Rehabilitation Counselors Assoc.  
 American Psychological Assoc. - Fellow  
 National Rehabilitation Assoc.  
 International Society for the Rehabilitation of the Disabled  
 New York Academy of Sciences  
 Eastern Psychological Assoc.  
 New York State Psychological Assoc.  
 Conference on Prosthetic-Orthotic Education  
 Certified Psychologist - New York State Dept. of Education  
 Who's Who in the East  
 American Man of Science  
 Leaders in American Education  
 Dictionary of International Biography  
 Community Leaders of America  
 New York State Dept. of Education

CONSULTATIVE ACTIVITIES (PAST OR PRESENT)

1962 - date Social Security Administration, Washington, D.C.  
 1967 - date Social and Rehabilitation Services, Dept. of Health, Education and Welfare  
 1968 - date Project HOPE  
 1968 - date American Orthotic and Prosthetic Assoc.-American Board for Certification in Orthotics and Prosthetics, Inc.  
 1970 - date Maternal and Child Health Service, U.S. Public Health Service, H.E.W.

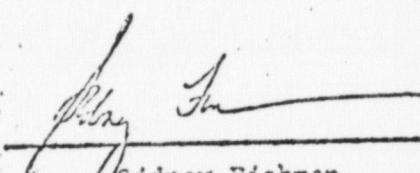
Position or TitleEmployedFromToEmployment or Work

- (d) Clinical Psychologist 1942 1942 Station Hospital, Fort Meade  
Set up and operated a psychological and vocational advisement section as part of the neuropsychiatric division.
- (e) Psychological Examiner 1942 1943 Armed Forces Induction Stations  
Established psychological screening program at two induction stations; interviewed, tested and examined appropriate records for Army selection purposes.
- (f) Personnel Research  
Technician 1943 1943 The Adjutant General's Office,  
War Department  
Construction and validation of two Army course examinations; 1) Occupations and Vocational Psychology and 2) Social Psychology.
- (g) Educational Advisor and  
Classification Officer 1943 1944 Massachusetts Institute of Tech.  
In charge of the advisement and assignment of 1500 basic and advanced engineering students.
- (h) Psychological Counselor 1944 1944 Tilton Hospital & Separation Center  
Organized and established a psychological counseling section and was member of the counseling staff of experimental separation center.
- (i) Instructor, Vocational  
Guidance 1944 1945 Separation Counseling School  
Was member of the original instructional staff; participated in inaugurating school by planning curriculum and courses.
- (j) Clinical Psychologist 1945 1945 Army Ground & Service Force Redistribution Station  
In charge of the psychological section providing clinical testing and counseling service for overseas returns.
- (k) Classification and  
Assignments Officer 1945 1946 Headquarters, ASCOMC  
Responsible for the classification and assignment of officer personnel assigned to the service troops of the 6th Army.
- (l) Personnel Research  
Psychologist 1946 1947 War Department  
Development and validation of psychological tests and rating techniques, such as officer efficiency scales and non-language intelligence tests.

Listings (a) through (l) above are military assignments.

COMMITTEE MEMBERSHIPS

|             |  |
|-------------|--|
| 1952 - 1964 | Committee on Prosthetic Research and Development, National Research Council-National Academy of Sciences; Member of Subcommittee on Child Prosthetics Problems 1957-date |
| 1969 - date | Amputee Service Program Advisory Committee, New York City Department of Health.  |
| 1960 - date | University Council on Prosthetic-Orthotic Education  |
| 1969 - date | Subcommittee on Special Educational Projects in Prosthetics and Orthotics, Committee on Prosthetic-Orthotic Education, NRC-NAS   |
| 1969 - date | Committee on International Relations, Council on Psychological Aspects of Disability, Division 22, American Psychological Assoc.   |
| 1970 - date | Committee on Education, American Prosthetic and Orthotic Assoc. -Chairman<br>Committee on Education, Int. Society for Prosthetics & Orthotics-Chairman                   |




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 Sidney Fishman

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DOUGLAS J. BUTURLA, :

Plaintiff, : NOTICE &amp; MOTION

- against - : Civil Action  
No. 71 C 1061CASPAR WEINBERGER, Secretary  
of Health, Education and  
Welfare, :

Defendant. :

SIR:

PLEASE TAKE NOTICE that, upon the pleadings, including the record and supplementary record of administrative proceedings, and all prior proceedings had herein, defendant shall move this Court on the 18th day of April, 1975 at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, for judgment on the pleadings dismissing the complaint pursuant to Rule 12(c) of the Federal Rules of Civil Procedure on the grounds that the pleadings disclose that there is no issue of fact to be tried and that defendant is entitled to judgment as a matter of law, and for such other and further relief as this Court shall deem just and proper.

Dated: Brooklyn, New York  
April 4, 1975

Yours, etc.,

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By:

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

DOUGLAS J. BUTURLA, :  
Plaintiff, : Civil Action  
No. 71 C 1061

- against -

CASPAR WEINBERGER, SECRETARY  
OF HEALTH, EDUCATION AND WELFARE, :  
Defendant. :

- - - - - X

MEMORANDUM OF LAW IN  
SUPPORT OF MOTION OF  
DEFENDANT FOR JUDGMENT  
ON THE PLEADINGS

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PRELIMINARY STATEMENT

This is an action against the SECRETARY OF HEALTH, EDUCATION AND WELFARE, under Section 205(g) of the Social Security Act (the "Act"), 42 U.S.C. §405(g), to review a final determination of the SECRETARY which denied the application of DOUGLAS J. BUTURLA for a period of disability and disability insurance benefits.

This memorandum is submitted in support of defendant's motion for judgment on the pleadings affirming the decision of the SECRETARY pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and Section 205(g) of the Act, 42 U.S.C. §405(g). This case presents no issue of fact to be tried, and defendant's determination that claimant has failed to establish a disability is supported by substantial evidence.

PRIOR PROCEEDINGS

Claimant filed an application for disability insurance benefits on April 14, 1970, claiming that he became unable to work beginning on December 10, 1969. (Tr. 32-35) The application was denied, both initially and upon reconsideration. (Tr. 38-39, 43-45) At claimant's request a hearing was held on May 24, 1971, at which his claim was considered de novo. (Tr. 20-31) The Hearing Examiner found that claimant was not under disability within the meaning of the Act (Tr. 6-15) and the Appeals Council denied claimant's request for review of

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the decision of the Hearing Examiner on June 29, 1971. (Tr. 3)

Claimant then commenced this action seeking judicial review. On January 19, 1973, this Court remanded the matter of claimant's application to the SECRETARY for further administrative action. Upon a supplementary evidentiary hearing, the Administrative Law Judge on November 9, 1973 determined once again that claimant is not entitled to a period of disability benefits. (Tr. 95-112) That claimant is not entitled to a period of disability or to disability insurance benefits became the final decision of the SECRETARY when the Appeals Council adopted the findings and conclusions of the Administrative Law Judge in its decision of December 8, 1973. (Tr. 76-78)

#### ISSUE

The sole issue presented to this Court is whether the SECRETARY'S decision that plaintiff was not under a disability within the meaning of the Act is supported by substantial evidence.

#### STATEMENT OF FACTS

Claimant's claim is based on a rib and back injury which he sustained on December 10, 1969, in an automobile collision which occurred while he was employed as a patrolman in the New York City Police Department. Claimant was thrown against the right car door, injuring his lower back, right hip region and right lower ribs. (Tr. 53) He was hospitalized for three

days immediately following the accident (Tr. 53) and again for three weeks starting on June 19, 1970. (Tr. 65)

With the exception of a few days of limited duty, (Tr. 183, 198), claimant ceased working for the Police Department from the time of the accident until his discharge from the Department on June 15, 1972 because of disability. (Tr. 182) After claimant's discharge, he spent several days a week for several months observing operations in a real estate office from about August 1972 to about December 1972. (Tr. 184-185, 198-199) Pursuant to a recommendation in May, 1973 by his physician Dr. Briggin, that he engage in light work, claimant began assisting his wife in her dog grooming shop. (Tr. 185) Plaintiff claims to have been disabled within the meaning of the Social Security Act from the date of his accident, December 10, 1969, to the time his activities in the shop commenced in May, 1973. (Tr. 200-201)

#### ARGUMENT

DEFENDANT'S DETERMINATION THAT PLAINTIFF FAILED TO ESTABLISH THAT HE MEETS THE STATUTORY STANDARD OF DISABILITY IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The claimant bears the burden of proving that he is disabled so as to be entitled to Social Security disability insurance benefits. This requirement is embodied in Section 223(d)(5) of the Act, which provides:

"An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require." 42 U.S.C. §423(d)(5).

"Disability" is defined in Section 223(d)(1)(A) as:

". . . inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; . . ."  
42 U.S.C. §423(d)(1)(A).

"[A]n individual . . . shall be determined to be under a disability," Section 223(d)(2)(A) explains,

"[O]nly if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . ." 42 U.S.C. §423(d)(2)(A) (emphasis added).

For purposes of §223(d)(2)(A), "work which exists in the national economy" is defined as:

"work which exists in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. §423(d)(2)(A)

Furthermore, "substantial gainful work" is not restricted under the statute to work which "exists in the immediate area in which he lives," or by whether or not

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"a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U.S.C. §423(d) (2)(A).

The applicable termination date of a claimant's alleged disability period is the "close of ... the second month following the month in which the disability ceases." 42 U.S.C. §416(i) (2)(D).

The nature of claimant's injury is not in issue. For purposes of his decision, the Administrative Law Judge accepted claimant's most severe characterization of his injury: that is, noting that claimant had never had surgery performed and that it could not therefore definitely be stated that claimant had sustained a herniated disc, the Administrative Law Judge assumed for the purposes of his determination that claimant had suffered that disorder. (Tr. 108) Thus, no issue as to the character of claimant's injury is presented.

Instead, assuming that claimant suffered a herniated disc, the issue was whether such an injury constituted a disability under the Act.

Substantial evidence supports the finding of the Administrative Law Judge that claimant's injury did not constitute a disability within the meaning of the Act.

The evidence of record shows that, following a short recuperative period after his accident, claimant's residual impairments were not of such severity that he was precluded

from returning to types of light or sedentary work for which he was otherwise qualified by virtue of his youth, education, and experience.

Dr. Frank, an orthopedic surgeon and medical adviser who testified at the request of the claimant's attorney, stated at the supplementary hearing that there are many people working full duty with herniated discs. (Tr. 158) Although Dr. Frank indicated that he would not state that plaintiff had no impairment, in light of his diagnosis of hysteria and psychogenic overlay, he nonetheless testified that claimant's actual orthopedic conditions produced no impairment of his ability to stand or sit, and slight impairment in bending his trunk. He said plaintiff could walk up to ten blocks with no impairment, could carry, pull, push, or lift up to twenty-five pounds, and could use public transportation. (Tr. 156-158) The doctor stated that his answers would be no different if it were in fact established that claimant had a herniated disc. (Tr. 158-159) The doctor further indicated that claimant was capable of sedentary or light physical activity and that this would be true even if claimant had a herniated disc. (Tr. 159-160)

Dr. Sidney Fishman, a vocational expert who testified at the supplementary hearing, was asked whether, considering certain dysfunctions, claimant could work at any full-time job based on his age, education, training and work experience. He was asked to assume that claimant suffered from a back impairment requiring him to wear a lumbosacral brace for support. He was further

asked to assume that the job would allow claimant to remain primarily seated, to have the opportunity to stand at will, and would not require frequent bending or lifting, pulling or pushing more than ten pounds. (Tr. 217-218) The witness indicated that claimant could perform office clerical jobs (Tr. 220-223), that claimant could also do bench assembly work in a variety of light industries in the New York area, (Tr. 220, 223), that claimant could work as a bench machine operator or as an inspector. (Tr. 227-228) The witness said all such jobs existed in the New York area and that a majority of employers would hire persons with injuries such as claimant's.<sup>1/</sup> (Tr. 229-230)

The testimony of a vocational expert witness as to the capacity of an individual to perform work activity has been repeatedly accepted. Ross v. Richardson, 440 F.2d 690 (6th Cir. 1971); Woods v. Finch, 428 F.2d 469 (3rd Cir. 1970); Gentile v. Finch, 423 F.2d 244 (3rd Cir. 1970); Gray v. Finch, 427 F.2d 336 (6th Cir. 1970); Mullins v. Gardner, 396 F.2d 139 (6th Cir. 1968); Miller v. Finch, 430 F.2d 321 (8th Cir. 1970). The testimony of such a witness need not be based on personal knowledge of the exact nature and duties of the jobs cited as being within a person's capabilities but may instead be based on secondary reference sources. Rose v. Cohen, 406 F.2d 753

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<sup>1/</sup> It should be noted that in any event, no finding that work is available in claimant's immediate area or that a specific job vacancy exists for him would be required. 42 U.S.C. §423(d)(2)(a).

(6th Cir. 1969); Schmidt v. Secretary of H.F.W., 299 F.Supp. 1315 (D.P.R. 1969). It has been held further that under the Act the Secretary may take administrative notice of jobs the plaintiff can do. Brown v. Finch, 429 F.2d 80 (5th Cir. 1970) Breaux v. Finch, 421 F.2d 687 (5th Cir. 1970).

Claimant has testified to severe pain in his back and lower right leg (Tr. 27) and has stated that he found himself unable to perform limited police duty. (Tr. 27) Nevertheless, it should be noted that claimant was able to observe activities in a real estate office for several months (Tr. 184), driving to and from the office, and that his failure to enter that line of business was not a result of physical inability to engage in that work but rather because he "decided against it."

(Tr. 185) Further, Dr. Bosworth, an orthopedic surgeon who examined claimant on January 18, 1971, found that while disabled for general police duty, claimant was not disabled for limited duty (Tr. 70), and also reported on May 16, 1972 that restricted status was possible except during possible periods of aggravated pain. (Tr. 260) Moreover, the Police Pension Fund Medical Board reported essentially negative findings on January 19, 1972. (Tr. 258)

There is conflicting medical evidence as to whether spinal surgery was required. In any event, claimant refused to undergo such surgery and returned to work in May, 1973 without having undergone the surgery. (Tr. 28)

Claimant claimed receipt of a police disability pension

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and a sum of money in a court action arising out of his alleged back injury. (Tr. 182, 202) However, it is well established that findings of disability by other governmental or non-governmental agencies are not determinative of the issue of disability under the Social Security Act, since the definitions of disability under the various programs may not be the same. Thus, the fact that claimant has been found to be disabled for purposes of other programs or agencies is not controlling as to the

SECRETARY. Soto v. Secretary of Health, Education and Welfare,

308 F.Supp. 603 (D.P.R. 1970) (military disability discharge);

Zimbalist v. Richardson, 334 F.Supp. 1350 (E.D.N.Y. 1971)

(determination of Veterans Administration of total disability);

McMullin v. Richardson, 350 F.Supp. 467 (E.D.Va. 1972) (military

disability discharge); Collier v. Richardson, 344 F.Supp. 768

(W.D.Va. 1972) (state industrial commission); Hash v. Richardson,

322 F.Supp. 267 (W.D.Va. 1971) (U.S. Public Health Services

determination of disability); Ratliff v. Richardson, 445 F.2d

440 (5th Cir. 1971) (employer's disability program); Echols v.

Gardner, 276 F.Supp. 499 (S.D.Tex. 1967) (military disability

discharge); Gee v. Celebrezze, 355 F.2d 849 (7th Cir. 1966),

cert. denied, Gee v. Gardner, 385 U.S. 856 (1966) (determi-

nations of "other agencies" made on the basis of different

standards); Little v. Richardson, 471 F.2d 715 (9th Cir. 1972)

(state agency determination of disability); Branch v. Finch,

313 F.Supp. 337 (D. Kansas 1970) (determination of disability

by state or some other agency).

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As noted above, in order to establish entitlement to a period of disability and disability insurance benefits, claimant has the burden of establishing that he was unable to engage in substantial gainful activity by reason of a physical or mental impairment the existence of which is demonstrated by evidence supported by objective data obtained by medically acceptable clinical and laboratory techniques, at a time when he met the insured status requirements of the Act. 42 U.S.C. §423(d)(5); DeNafo v. Finch, 436 F.2d 737 (3rd Cir. 1971); Reyes-Robles v. Finch, 409 F.2d 84 (1st Cir. 1969); Franklin v. Secretary of H.E.W., 393 F.2d 640 (2d Cir. 1968); Peterson v. Gardner, 391 F.2d 208 (2d Cir. 1968).

On the basis of a thorough evaluation of the evidence of record, the SECRETARY determined that this claimant failed to establish that he was under a disability within the meaning of the Act. It is submitted that the Secretary's determination is reasonable and should be affirmed by this Court as supported by substantial evidence. 42 U.S.C. §405(g). Richardson v. Perales, 402 U.S. 389 (1971); Levine v. Gardner, 360 F.2d 727 (2d Cir. 1969); DeJesus Faria v. Secretary of H.E.W., 336 F.Supp. 1069 (D.P.R. 1971); Torres v. Secretary of H.E.W., 333 F.Supp. 676 (D.P.R. 1971).

CONCLUSION

It is respectfully submitted that the decision of the SECRETARY is supported by substantial evidence and should be affirmed.

Dated: Brooklyn, New York  
April 4, 1975

Respectfully submitted,

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LOUISE S. GOLDBERG, a senior law student at the New York University Law School and a participant in the Federal Civil Litigation Clinic conducted in the Office of the United States Attorney, Civil Division, assisted in the preparation of this Memorandum.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DOUGLAS J. BUTURLA,

Plaintiff,

-against-

Civil Action  
No. 71 C 1061

CASPAR WEINBERGER, SECRETARY OF  
HEALTH, EDUCATION AND WELFARE,

Defendant.

-----x

MEMORANDUM OF LAW IN  
OPPOSITION TO MOTION  
OF DEFENDANT FOR  
JUDGMENT ON THE PLEADINGS

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PRELIMINARY STATEMENT

This memorandum is submitted in opposition to the defendant's motion for judgment on the pleadings dismissing plaintiff's complaint on the grounds that this case presents issues of fact and that the decision of the Secretary is not supported by substantial evidence.

This is an action against the Secretary of Health, Education and Welfare to review a final determination of the Secretary which denied the application of plaintiff, DOUGLAS J. BUTURLA for a period of disability and disability insurance benefits.

PRIOR PROCEEDINGS

Plaintiff filed an application for disability insurance benefits on April 14, 1970 due to his inability to work commencing on December 10, 1969. His application being denied, plaintiff requested a hearing which was held on May 24, 1971. Again, plaintiff's claim was denied and the Appeals Council denied plaintiff's request to review the decision of

the Hearing Examiner.

Subsequently, plaintiff commenced an action in this Court seeking judicial review. On January 19, 1973, this Court remanded this action to the Secretary for further administrative action. On October 24, 1973, a supplementary evidentiary hearing was held upon which it was decided that plaintiff was not entitled to disability benefits. Thereafter, the Appeals Council adopted the findings and conclusions of the Administrative Law Judge and this became the final decision of the Secretary.

STATEMENT OF FACTS

Plaintiff's claim for disability insurance benefits is based upon the severe back injury which he sustained on December 10, 1969, in an automobile collision which occurred while he was in the course of his employment as a patrolman for the New York City Police Department. Plaintiff injured his lower back, right hip region and right lower ribs when he was thrown against the right car door of the automobile in which he was a passenger. He was immediately hospitalized for his

back injury at Doctor's Hospital for 4 days and subsequently was readmitted to Doctor's Hospital for approximately 1 month and received 24 hours a day traction and was treated by several doctors. (record to be later referred to)

Plaintiff ceased working for the Police Department, with the exception of a few days of light duty, from the date of the accident until his discharge from the Police Department on June 15, 1972 because of his severe back injury and disability. Thereafter, plaintiff spent one or two days a week for several months attempting to learn the operations of a real estate office from about August 1972 to December 1972 (Tr. 198-199). In May 1973, plaintiff began assisting his wife in her dog grooming shop a few hours a day up to October 24, 1973, the hearing date (Tr. 185).

#### ARGUMENT

DEFENDANT'S DETERMINATION THAT PLAINTIFF FAILED TO ESTABLISH THAT HE MEETS THE STATUTORY STANDARD OF DISABILITY IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Plaintiff submits that he was disabled within

the meaning of the Social Security Act from December 10, 1969 to May, 1973, and defendant's determination that he has failed to establish a disability is not supported by substantial evidence.

The record shows that plaintiff's impairment was of such severity that he did not return to work following the accident until October, 1970, ten months after his accident (Tr. 183). It will also show that his injury was of such severity that he was not able to work limited or light duty for the Police Department at that time for more than a few days and subsequently was totally disabled and totally unable to work up to the time he was discharged from the Police Department on June 15, 1972 due to a finding of total disability resulting from his back injury (Tr. 183, 198). Furthermore, the record shows that after June 15, 1972, plaintiff spent one to two days a week, three to four hours a day at a real estate company for approximately four months in order to observe and learn (Tr. 198-199). Subsequently, he remained totally disabled until May 1973. After May 1973, to the hearing date, October 24, 1973, he continued to be substantially disabled while he worked part

time in his wife's dog grooming shop.

It is submitted that this record indicates that plaintiff's impairments precluded him from engaging in "substantial gainful activity" within the meaning of 42 U.S.C. 423 (a) (1) (A). It has been held in Margaret Lyoyd v. HEW, USDC, D.C. (1972), where claimant had three different jobs as accountant and bookkeeper for eleven months in a twenty month period and had to quit these jobs because of impairments, that the inability to stay on a job for a reasonable length of time showed an inability to do substantial, gainful activity. Further, in Arthur Sheehan v. Richardson, USDC, Conn. (1973), where a truck driver with ruptured vertebral discs had vocational rehabilitation training for two years at a school of watchmaking, for six hours per day, four days a week, the Court held that training for future employment is not tantamount to the ability to do substantial, gainful activity. Further, in Roberta Toole v. Weinberger, USDC, D. Ore. (1973), the Court held that work for short periods of time or light part-time work at low pay with a sympathetic employer is not substantial, gainful activity. It should be noted here that plaintiff ultimately took a part-time position in his wife's pet grooming shop in May

1973 (Tr. 185-186, 199-200). In Joan Siegers v. Richardson, USDC, WD - Mich. (1970), the Court held that family-oriented part-time work is not gainful, substantial work. Therefore, it is submitted that the record is supported by substantial evidence that the plaintiff was not able to do substantial gainful activity.

In Copeland v. Secretary of HEW, 336F Supp. 517 (1972), the Court held that the earning by claimant the amount of \$500.00 over a six month period did not evidence a capacity to engage in substantial gainful activity and granted plaintiff's motion for summary judgment.

With respect to the testimony of Dr. Frank, an orthopedic surgeon assigned by HEW to examine the plaintiff, he attempted to testify as to plaintiff's impairment on the basis of mental causes, as well as to orthopedic (physical) causes (Tr. 156-157, 166-169). In his report (Tr. 264), Dr. Frank states that "There is a certain degree of back strain and right lumbar neuropathy....The basis for his present difficulties and inability to move is mainly psychogenic. It is nevertheless real and he needs some psychiatric support if he

is not to become invalided at an early age" (Emphasis added).

It was Dr. Frank's opinion that plaintiff was unable to move and in danger of becoming an invalid at an early age mainly due to the psychogenic after effects of his back injury. However, the Administrative Law Judge severely limited Dr. Frank's testimony to orthopedic findings (Tr. 157, 159, 161) and did not allow Dr. Frank to testify as to impairments of a psychogenic nature in association with a herniated disc. It is submitted that the Act allows disability benefits for a disability due to mental impairment as well as physical impairment and therefore the Administrative Law Judge erred in excluding this testimony by Dr. Frank. In *Whitt v. Gardner* 389 F 2d 906 (1968), where a miner with a back injury filed for benefits because of inability to work because of pain and had been diagnosed by doctors as being nervous with severe anxiety and depression, the Court held it was error for the Secretary to hold that impairment must be established by objective medical, clinical or laboratory evidence; disability or impairment due to neurosis will entitle claimant to benefits. In *Smith v. Weinberger*, 356F. Supp. 954 (1973), the Court held that a com-

bination of physical and mental impairments would entitle a claimant to benefits if he was prevented from engaging in gainful employment because of them; objective data was not the sole criterion. It was also held that it was error for the Secretary to disregard evidence of pain in denying benefits in McGoldrick v. Richardson, USDC, WD-No (1971). Plaintiff testified as to his severe pain and necessity to take pain medication and the wearing of a back brace (Tr. 178-182) and all of the doctors who examined plaintiff supported his complaints of pain. Yet this testimony as to the disabling nature of pain is disregarded by the Administrative Law Judge in his decision. Therefore, it is submitted that the Administrative Law Judge erred in two respects; Firstly, in not considering any testimony as to the psychiatric or mental impairment of plaintiff and insisting on objective data; and secondly, in disregarding the disabling nature of pain as testified to by the plaintiff, and as supported by all the doctors in their reports submitted to the Administrative Law Judge.

With reference to the testimony of Dr. Sidney Fishman, the vocational expert who testified at the supplement-

tary hearing, it is submitted that the validity of his testimony stands or falls upon the validity of the hypothetical question that was posed to him by the Administrative Law Judge. In other words, if the Administrative Law Judge erred in his conclusion in formulating his hypothetical question as to the severity of plaintiff's impairment, then Dr. Fishman's testimony would be invalid. Since Dr. Fishman did not have the benefit of Dr. Frank's evaluation of plaintiff's mental or psychological impairments, Dr. Fishman's opinion was based on insufficient information. However, for the reasons cited above, Dr. Fishman's testimony is not valid because the hypothetical question posed to him by the Administrative Law Judge is not supported by substantial evidence.

As to the plaintiff's refusal to undergo spinal surgery, Dr. Frank testified (Tr. 166-169) that many patients develop a fear of spinal surgery. This is in accord with Dupius v. Finch, USDC, WD-LA (1970), where claimant was found to have sacroiliac strain and a slipped disc. A vocational expert stated that the claimant could become a school crossing watchman. Claimant's doctors recommended surgery in that case, but

claimant refused for fear of being confined to a wheelchair and of death itself. The Court held there that claimant was disabled and granted benefits and should not be prejudiced because of a genuine fear of spinal surgery.

With respect to the Police Pension Fund Medical Board, their examination of plaintiff on May 24, 1972 found him unfit for police duty by reason of his back and subsequently on June 15, 1972 he was retired on a certificate of accident disability.

Finally, the determination of the government's agents and employees were pre-determined and are self-serving. Where it was first determined that plaintiff was not entitled to social security there was no medical examination by any doctor of the government to support the speculative hearsay self-serving conclusions and decision of the government employees which facts were set forth in paragraph 13 of plaintiff's complaint.

To obviate this patent situation another hearing was set up on October 24, 1973 and this time for the hearing,

Dr. Harbush examined the plaintiff. Unfortunately, Dr. Harbush died and although his x-rays were produced, his tapes were not produced.

The claim was that the tapes were "undecipherable" (Tr. 189-191). The tapes were never produced to see if they were actually undecipherable although the x-rays of poor technical quality were produced (Tr. 155 and 156). Reservation was made at that hearing that plaintiff have the right to have his own doctor present at the hearing (Tr 137).

This reservation was made because a few days prior to the hearing, it was ascertained that plaintiff's doctors were unavailable for the hearing. Dr. Bosworth having retired and Dr. Briggan being on vacation. Prior to the hearing, the referee was called for an adjournment but would not grant one.

To the present, the government employees in all of their conclusions have not shown the following facts:

Immediately after December 10, 1969, the date of the accident and the onset of his back injury, plaintiff

was confined to Doctor's Hospital for three days (Tr. 179). Dr. Briggan treated his back three times a week to April 29, 1970 and once a week up to May 27, 1970 and approximately twice a month to July 28, 1970 and approximately once a month to June 22, 1972 and subsequently in February 1973, March 29, 1973 and May 1973 (Exhibit 24 - Tr. 276) and during this period he was also seeing Mr. Boworth and Dr. Savino and having x-rays taken (Exhibit 25 - Tr. 258) and was on Percodan and Talwin and muscle relaxants (Tr. 182) and was hospitalized for his back again in Doctor's Hospital in June 1970 for approximately one month (Tr. 180) and did light work a few days (Tr. 183) and Dr. Frank's report states as follows: "He worked for a while at a sedentary job with the Police Department but found that he could not even sit in one position for any period of time and was finally retired from the job on June 15, 1972" (Exhibit 30 - Tr. 263). That he was totally disabled until June 15, 1972 (Tr. 182) and used a portable traction machine three times a week to the date of the hearing of October 24, 1973 (Tr. 182) and that he continued under the care of Dr. Briggan until May 1973 (Tr. 185).

It was also unrevealed to the present time

that Dr. Frank accepted the fact that plaintiff was totally disabled up to June 1972 as determined by the Police Department and that he was partially disabled up to the time of the hearing on October 24, 1973 (Tr. 156) so that the findings of another governmental or non-governmental agency were accepted by the government contrary to the claim of David C. Trager in his memorandum (Tr. 143). Dr. Frank admitted that early x-rays between L4 & L5 but later X-Rays showed the narrowing of plaintiff's back showed no narrowing and this meant extension of disc material leading to a diagnosis of herniation (Tr. 144 and 145). Dr. Frank testified that Dr. Bosworth's diagnosis of lacerated lumbar 4 disc meant a tear of the disc and this meant a herniation (Tr. 166) so that a diagnosis of herniated disc was firmly established contrary to the gratuities of David C. Trager in his memorandum (pages 6 and 7).

Dr. Frank could say nothing about "standing, sitting, pulling, pushing" prior to his examination of the plaintiff (Tr. 163).

Again on Tr. 172-173 he could give no commitment or opinion prior to his examination as to pushing, pulling, carrying and bending.

Dr. Fishman was not a medical doctor (Tr. 209-210).

The referee nevertheless proposed the hypothetical question that from December 10, 1969 to March 1973, that Dr. Frank had stated, which he never had, that plaintiff could do "pushing and pulling even with a force up to 25 lbs." (Tr. 218).

This further assumption was without foundation, untrue, false and incorrect, improper and a distortion of the record that any answers by Dr. Fishman, not a medical doctor, are meaningless and worthless, speculative and hearsay and must be disregarded, stricken and purged from the record.

In conclusion, it was obvious that the pattern of predetermination preconceived by the governmental agents and employees was going to continue and the referee was going to find against plaintiff. Again in desperation and futility it was requested that plaintiff be allowed to have time to obtain his own doctor (Tr. 248).

In the light of the cold record, it is clear that this was not necessary and the government did not legally prove that plaintiff could perform any other work outside of his regular work from December 10, 1969 to May 1973 and did not prove and sustain their affirmative defenses alleged in their answer. On the contrary, the uncontradicted testimony of the plaintiff showed that he was totally disabled from work up to June 15, 1972 when he was retired and thereafter could not engage in substantial, gainful activity as defined by the Courts.

The uncontroverted evidence shows during this period that he attempted to do light police work but couldn't even sit in one position for any length of time.

That he continued to be substantially incapacitated from June 15, 1972 until May 1973 during which time he was still under medical treatment and used a portable traction machine three times a day and that he attempted to reorientate himself and learn real estate without pay from approximately June 1972 to January 1973, and from May 1973 to October 24, 1973, the hearing date, he worked part time for a few hours a day in

his wife's pet shop.

In recapitulation, the report of Dr. Frank shows that he examined plaintiff on August 16, 1973 (Tr. 263). So that his orthopedic findings and testimony relating to plaintiff's disability did not cover any period prior to his examination of August 16, 1973 (Tr. 163 and 172-173). So that an award even on the orthopedic findings permitted and limited by the referee must be sustained up to August 16, 1973.

In addition, since Dr. Frank was only permitted to testify and was limited to his orthopedic findings (Tr. 156-157, 166-169) in evaluating future disability from the date of his examination of August 16, 1973, his opinion without considering the psychogenic findings on future disability is legally inadequate and not binding and an award must be continued and given to the plaintiff up to October 24, 1973, the date of the hearing.

#### CONCLUSION

WHEREFORE, it is respectfully submitted that the decision of the Secretary is not supported by substantial

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evidence and should be reversed and disaffirmed and Social Security award be made to the plaintiff.

Dated: New York, N.Y.  
May 22, 1975.

Respectfully submitted,

MORTON M. BERGER  
Attorney for Plaintiff  
535 Fifth Avenue  
New York, N.Y. 10017

1  
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 DOUGLAS BUTURLA, :  
6                      Claimant, :  
7                      -against- : 71-C-1061

8 CASPER WEINBERGER, SECRETARY :  
9 HEALTH, EDUCATION AND WELFARE, et al., :  
10                      Respondent.

11 -----X

12                      United States Courthouse  
13                      Brooklyn, New York

14                      May 27, 1975  
15                      11:00 o'clock a.m.

16 Before :

17                      HON. JACK B. WEINSTEIN,

18                      U.S.D.J.

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22

23

24                      HENRY SHAPIRO  
25                      Official Court Reporter

1  
2 Appearances :3  
4 MORTIN M. BERGER, ESQ.  
5 Attorney for Claimant6 DAVID G. TRAGER  
7 United States Attorney  
8 Eastern District of New York  
9 Attorney for Respondent10  
11 By: HENRY A. BRACHTL  
12 Assistant United States Attorney  
13 Deputy Chief Civil Division

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2           THE COURT: The court has heard  
3           full argument on this matter. It was before  
4           this court on an earlier occasion. This  
5           court through Judge Rosling remanded the case  
6           for supplemental proceedings. At the supplemental  
7           proceeding the claimant was represented by eminent  
8           counsel and was given a full opportunity to  
9           present evidence. There was testimony particularly  
10          from an orthopedic specialist, Dr. Frank, and  
11          based upon that medical testimony there was  
12          testimony from Dr. Fishman on jobs that the  
13          claimant might have held during the period he  
14          claimed full disability.

15          The administrative judge wrote a full  
16          analysis of the record and appeals counsel also  
17          analyzed the objections made by the claimant to  
18          the administrative board judges' findings and  
19          conclusions.

20          This court finds that there is a  
21          substantial basis for the denial of disability  
22          benefits.

23          At this hearing the chief and so far  
24          as I can tell the only objection is that the  
25          hypothetical question put to Dr. Fishman assumed

1  
2       a state of medical facts not established  
3       through the testimony of Dr. Frank.

4                   MR. BERGER: That is right.

5                   THE COURT: Namely, that Dr. Frank  
6       testified to the orthopedic situation as of  
7       the date of his examination and thereafter,  
8       whereas Dr. Fishman's testimony was predicated  
9       on assumptions that that orthopedic situation  
10      existed prior to the examination.

11                  In addition, Dr. Frank's testimony  
12      with respect to the psychogenic overlay was  
13      not adequately encompassed within the opinion  
14      of Dr. Fishman - - -

15                  MR. BERGER: As to disability, not just  
16      injury.

17                  THE COURT: - - as to disability.

18                  MR. BERGER: Not as to just the herniated  
19      disc. It is possible that you could have a  
20      herniated disc without any disability. The  
21      important thing here is disability, not just  
22      the injury.

23                  THE COURT: An expert may of course  
24      base his testimony <sup>the</sup> on/expert opinion of another  
25      expert, and if he is expert he may draw

1                   inferences from that expert's opinion  
2                   although they are not stated explicitly.

3                   See Rule 703 of the Rules of Evidence of  
4                   the Federal Court.

5                   While the record is not as complete  
6                   as it would have been on a full trial with  
7                   counsel for both sides and with the judge  
8                   acting as an impartial arbitrator instead of  
9                   himself participating in colloquy with counsel  
10                  and asking questions, based upon the reading  
11                  of many of these records I cannot say that  
12                  there was a sufficient lack of record to  
13                  warrant a reversal. There is a substantial  
14                  basis for the decision below.

15                  Accordingly, the motion for summary  
16                  judgment must be granted. This constitutes  
17                  the findings of the court.

18                  Thank you, gentlemen.

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Butler - Beeson

STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

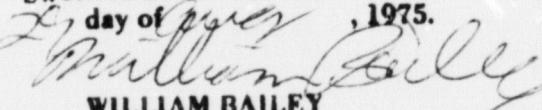
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 29 day of ~~August~~, 1975 deponent served the within ~~Apperson~~ upon ~~Daniel~~ + ~~treels~~

attorney(s) for Appellee

in this action, at 225 Cadman Plaza West  
Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this  
27 day of ~~Aug~~, 1975.  
  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976